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Reports of the Committee on Freedom of Association

382nd Report of the Committee on Freedom of Association

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Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 1, 2 and 9 June 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 Tudorie (Romania); Employers' group Vice-Chairperson, Mr Echavarría and members, Mr Frimpong, Ms Hornung-Draus, Ms Horvatic, Mr Mailhos and Mr Matsui; Workers' group Vice-Chairperson, Mr Veyrier (substituting for Mr Cortebeeck), and members, Mr Asamoah, Mr Ohrt and Mr Ross. The members of Colombian, Romanian and Uruguayan nationality were not present during the examination of the cases relating to Colombia (Case No. 3131), Romania (Case No. 3129) and Uruguay (Case No. 3175).

* * *

3. Currently, there are 176 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 22 cases on the merits, reaching definitive conclusions in 17 cases (ten definitive reports and seven reports in which the Committee requested to be kept informed of developments) and interim conclusions in five cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

Follow-up to the Governing Body decisions

4. The Committee reviewed the work undertaken by the Office with a view to the publication referred to in the recent decisions of the Governing Body (GB.326/INS/12, March 2016 and GB.329/INS/17(Add.), March 2017). The Committee decided that the Office would review this work on the basis of its discussions and indications in order to provide a version in September 2017 for the subcommittee's consideration with a final view at the next meeting of the Committee in October 2017, for subsequent publication.

Examination of cases

5. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. This effective cooperation with its procedures has continued to improve the efficiency of the Committee's work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee would therefore once again remind governments to send information relating to cases in paragraphs 8 and 11 below as soon as possible to enable their treatment in the most effective manner. Communications received after 2 October 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

6. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2254 (Bolivarian Republic of Venezuela), and 2508 (Islamic Republic of Iran),

2609 (Guatemala) and 3203 (Bangladesh) because of the extreme seriousness and urgency of the matters dealt with therein.

Paragraph 69 of the Committee's procedures

7. In light of the current circumstances in the Democratic Republic of the Congo, the Committee has decided to continue to postpone its invitation to the Government, by virtue of its authority as set out in paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, until the circumstances in the country enable effective representation to come before it.

Urgent appeals: Delays in replies

8. As regards Cases Nos 2949 (Swaziland), 3067 (Democratic Republic of the Congo), 3074 (Colombia), 3076 (Republic of Maldives), 3095 (Tunisia), 3113 (Somalia), 3125 (India), 3185 (Philippines), 3209 (Senegal), 3212 (Cameroon), 3213 (Colombia), 3216 (Colombia), 3220 (Argentina), 3223 (Colombia), 3227 (Republic of Korea), 3228 (Peru), 3230 and 3234 (Colombia), and 3238 (Republic of Korea), 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), 2445 (Guatemala), 2902 (Pakistan), 2923 (El Salvador), 3148 (Ecuador), 3178 (Bolivarian Republic of Venezuela), 3183 (Burundi), 3235 (Mexico), 3237 (Republic of Korea), 3239 (Peru), 3240 (Tunisia), 3241 (Costa Rica), 3242 (Paraguay), 3243 (Costa Rica), 3244 (Nepal), 3245 (Peru), 3246 and 3247 (Chile), 3248 (Argentina), 3249 (Haiti), 3250, 3251 and 3252 (Guatemala), 3253 (Costa Rica) and 3254 (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), 2761 (Colombia), 2817 (Argentina), 2830 (Colombia), 2869 and 2967 (Guatemala), 2982 (Peru), 3023 (Switzerland), 3027 (Colombia), 3032 (Honduras), 3042 (Guatemala), 3078 (Argentina), 3089 (Guatemala), 3091 (Colombia), 3094 (Guatemala), 3112 (Colombia), 3115 and 3120 (Argentina), 3133 (Colombia), 3135 (Honduras), 3137 (Colombia), 3139 (Guatemala), 3141 (Argentina), 3149 and 3150 (Colombia), 3158 (Paraguay), 3161 (El Salvador), 3165 (Argentina), 3170 (Peru), 3179 and 3188 (Guatemala), 3192 (Argentina), 3194 (El Salvador), 3201 (Mauritania), 3206 (Chile), 3210 (Algeria), 3211 (Costa Rica), 3215 (El Salvador), 3217 (Colombia), 3219 (Brazil), 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 2318 (Cambodia), 2989 (Guatemala), 3016 (Bolivarian Republic of Venezuela), 3068 (Dominican Republic), 3081 (Liberia), 3090 and 3103 (Colombia), 3119 (Philippines), 3121 (Cambodia), 3124 (Indonesia), 3126 (Malaysia), 3127 (Paraguay), 3144 (Colombia), 3152 (Honduras), 3157 (Colombia), 3163 (Mexico), 3167 (El Salvador), 3168, 3173 and 3174 (Peru), 3187 (Bolivarian Republic of Venezuela), 3190, 3193 and 3195 (Peru), 3196 (Thailand), 3197, 3199 and 3200 (Peru), 3202 (Liberia), 3204 (Peru), 3205 and 3207 (Mexico), 3208 (Colombia), 3214 (Chile), 3218 (Colombia), 3221 (Guatemala), 3224 (Peru), 3225 (Argentina), 3226 (Mexico), 3229, 3232 and 3233 (Argentina), 3236 (Philippines), 3261 (Luxembourg) and 3268 (Honduras), 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: 3255 and 3256 (El Salvador), 3257 (Argentina), 3258 (El Salvador), 3259 (Brazil), 3260 (Colombia), 3261 (Luxembourg), 3262 (Republic of Korea), 3263 (Bangladesh), 3264 (Brazil), 3265 (Peru), 3266 (Guatemala), 3267 (Peru), 3268 (Honduras), 3269 (Afghanistan), 3270 (France), 3271 (Cuba), 3272 (Argentina), 3273 (Brazil), 3274 (Canada), 3275 (Madagascar), 3276 (Cabo Verde), 3277 (Bolivarian Republic of Venezuela) and 3278 (Australia), since it is awaiting information and observations from the Governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

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 freedom of association Conventions, to the attention of the Committee of Experts on the Application of Conventions and Recommendations: 2694 (Mexico), 3021 (Turkey), 3117 (El Salvador), 3160 (Peru) and 3203 (Bangladesh).

Cases in follow-up

14. The Committee examined 16 cases in paragraphs 15 to 145 concerning the follow-up given to its recommendations and concluded its examination with respect to seven cases: Cases Nos 1962 (Colombia), 2667 (Peru), 2725 (Argentina), 2780 (Ireland), 2895 (Colombia), 2953 (Italy) and 3105 (Togo).

Case No. 2944 (Algeria)

15. This case was last examined by the Committee at its March 2015 session and concerns allegations of a systematic refusal by the authorities to process applications for registration submitted by trade union confederations [see 374th Report, paras 13–17]. On that occasion, the Committee expressed its concern at the particularly long delay in processing the registration of the Higher Education Teachers' Union (SESS) and the National Autonomous Union of Postal Workers (SNAP) – whose applications for registration were submitted in January and June 2012 respectively – and requested the Government to register these two trade unions without delay provided that they had met the conditions required by the administration.

16. In communications dated 31 May and 19 August 2015, the Autonomous General Confederation of Algerian Workers (CGATA), of which the SESS and the SNAP are affiliates, reports that the authorities are still refusing to register the two trade unions; that the founding members of the SESS have been the subject of an internal security service investigation; and that some of them, including the union's national coordinator and a member of its national office, have been summoned to police headquarters for questioning with no legal justification. The CGATA adds that the authorities are also refusing to register the following trade union organizations: the Autonomous Regional Union of Workers in Construction, Forestry and its Derivatives (SRATCBD), the National Autonomous Union of the Agriculture and Rural Development Bank (SNABADR), the National Union of Workers of MOBILIS (SNTM), the National Trade Union of Workers of EUREST Algeria (SNATEA), the Autonomous National Union of Workers in Hygiene and Maintenance (SNATHM), the Trade Union of Workers of the Botanical Garden of El Hamma (STJEH), the National Autonomous Union of Manufacturing and Processing of Paper and Packaging Workers (SNATFTPE), and the Autonomous Algerian Transport Union (SAAT).
17. In a communication dated 13 December 2015, the Government informs the Committee that the SNAP has been registered under reference No. 110 of 12 December 2015 pursuant to Act No. 90-14 on the exercise of the right to organize. *While noting with satisfaction that the SNAP was registered in December 2015, the Committee recalls that it has subsequently received from the SNAP a complaint concerning discrimination against its officials and has made recommendations in that regard (Case No. 3104, 377th and 381st reports). Furthermore, the Committee deplores the fact that the Government has provided no information on the status of the SESS and is particularly concerned at the allegation that many other trade union organizations that have asked to be registered are still in the same situation as the SESS: the authorities are making numerous non-regulatory demands in order to delay their registration. The Committee expects the Government to register the SESS as a matter of urgency, provided that it has met the conditions required by the administration, and to be kept informed in this regard. In addition, the Committee invites the Government to give its full attention to the situation of the abovementioned trade union organizations with respect to their registration.*

Case No. 2725 (Argentina)

18. The Committee last examined the substance of the case at its November 2012 meeting [see 365th Report, paras 23–26]. On that occasion, the Committee requested the Government: (i) to keep it informed regarding the fine applied to the Mendoza Association of Health Professionals (AMPROS) for non-compliance with the call to compulsory conciliation, of the ruling handed down; and (ii) to send its observations without delay on the allegations made by the Trade Union Federation of Health Professionals of the Argentine Republic (FESPROSA) concerning sanctions against certain trade unionists, and reiterated its invitation to the complainant organization, FESPROSA, to provide information on this matter.
19. As part of the follow-up case, in its communication of 18 March 2013 the Government refers to an agreement signed between AMPROS and the government of the province of Mendoza, which has been approved by the Governor of that province (ad referendum by the provincial legislature), and under which it was agreed to cancel the fine imposed by Resolution No. 210/11 and also to withdraw Violation Report No. 403.049 of 7 December 2010. The Government reports that, in accordance with the agreement, the relevant judicial and administrative proceedings were suspended. On the other hand, the text of the agreement should specify that when the approval formalities have been duly completed, the complaint lodged by AMPROS before the Committee would be withdrawn.

20. *Under these circumstances, since no other observations were provided by the complainants, the Committee will not pursue its examination of the case.*

Case No. 1962 (Colombia)

21. The Committee last considered this case at its June 2008 session [see Report No. 350, paras 44–46]. On that occasion, the Committee again invited the Government and the Public Employees' Trade Union of the Municipality of Neiva to seek a solution regarding compensation for municipal employees who were dismissed in 1993 in violation of the collective agreement.
22. The Committee takes note of the various communications sent by the Public Employees' Trade Union of the Municipality of Neiva (the latest of which is dated 24 September 2013) and the Single Confederation of Workers of Colombia, Huila Section (the latest of which is dated 10 April 2015), alleging persistent non-compliance with the Committee's recommendations concerning compensation for the 155 employees of the Municipality of Neiva who were dismissed in 1993 in violation of the municipality's collective agreement.
23. The Committee also takes note of the communication dated 30 May 2011 from the Public Servants' and Employees' Trade Union of Pitalito-Huila, in which the trade union states that: (i) the Committee's recommendations regarding the dismissal by the municipality of Pitalito of all employees and union members of the Public Servants' and Employees' Trade Union of Pitalito-Huila in 1993 have not been followed; and (ii) contrary to the Committee's understanding in its report of 2006, although the provisions of the collective agreement on security of tenure had been violated, the Supreme Court did not order the payment of compensatory damages but merely the payment of wages for the equivalent of a period of notice.
24. The Committee also takes note of the Government's communication dated 27 October 2015, stating with regard to the employees of the municipality of Neiva that: (i) the case concerns national restructuring and the abolition of posts, areas in which the Committee has no competence; (ii) as the Committee has been informed, Colombia's justice system and, in particular, its Constitutional Court has already issued many rulings in this case; (iii) in the light of the statement by the Constitutional Court that its rejection of several appeals lodged by the employees "is not incompatible with the need for the Government and the trade unions to take action in order to give appropriate effect to the recommendations of the Committee on Freedom of Association", the Committee's recommendations were raised in the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT); and (iv) the parties appeared before the CETCOIT on 27 June 2013 and although some rapprochement and dialogue was achieved, it was not possible to reach consensus.
25. *While taking due note of the information provided by the Government, the Committee recalls that since this case was first opened in 1998, it has been considered on its merits on six occasions and this is the fourth consideration of the effect given to its recommendations. The Committee also recalls, with regard to the allegations relating to the employees of the municipality of Neiva, that: (i) the Ministry of Labour stated at the time that the dismissal of 155 municipal employees constituted a violation of the collective agreement and imposed a corresponding fine on the municipality; (ii) the employees who brought the matter before the court requested reinstatement, which they were denied because their posts had been abolished; (iii) the Committee has observed that although the Constitutional Court denied the employees' appeals, it did not rule on the merits of the case; and (iv) during its successive considerations of the present case, the Committee has requested on seven occasions that the employees dismissed by the municipality be compensated for violation of the provisions of their collective agreement on security of tenure. The Committee also takes note of the additional information provided by the Public Servants' and Employees' Trade Union of*

Pitalito-Huila concerning an issue similar to that involving the municipal employees of Neiva.

26. *Recalling that mutual respect for the commitments undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 940], the Committee expresses its concern at the fact that, 25 years after the events, the municipal employees dismissed in violation of the collective agreements governing their working conditions have yet to receive compensatory damages. The Committee therefore urges the Government to take the necessary measures to ensure full respect for the binding nature of collective agreements in the future. Additionally it once again invites the Government to seek a solution enabling the employees of the two municipalities whose collective agreements were violated to obtain compensation.*

Case No. 2710 (Colombia)

27. The Committee last examined this case at its November 2011 session [see 362nd Report, paras 446–470] and, on that occasion, made the following recommendations:
- (a) As regards the administrative investigation initiated against [the National Union of Workers in the Metal Engineering, Machinery, Metallurgical, Railways Industry and in the Allied Marketing and Transport Sector (SINTRAIME)] for damage to rail installations, workshops and doors of the enterprise facility, the Committee observes that, according to the enterprise, the administrative proceedings are now under way in the Ministry of Social Protection, under the responsibility of Inspector No. 16, pending a decision on the request for evidence submitted by the defendant trade union. The Committee requests the Government to keep it informed of developments and to send a copy of the decision once it is handed down.
 - (b) As regards the allegations concerning the disappearance of the president of the Santa Marta branch of SINTRAIME (Mr José de Jesús Orozco), the Committee observes that the Government does not provide any new information on the whereabouts of this trade union official and therefore reiterates its previous recommendation and urges the Government, and the complainant organization, to send new detailed information, without delay, on the alleged facts and on the whereabouts of this trade union official.
 - (c) As regards the allegation that several workers had been arrested after the work stoppage held by SINTRAIME, the Committee notes that, according to the Government, no worker is currently being held in custody for the events of 24 March 2009. The Committee requests the Government to provide information on the alleged arrests of workers immediately following the work stoppage in March 2009, and which the Committee understands were temporary, and if there are any penal charges pending against them.
 - (d) As regards the refusal to negotiate the list of demands presented by SINTRAIME, the Committee observes that the trade union opted to refer the matter to an arbitration tribunal and requests the Government to send the arbitration award handed down in this context.
 - (e) As regards the anti-union dismissals alleged by [the Single National Union of Workers in the Mining, Energy, Metallurgical, Chemical and Allied Industries (FUNTRAENERGETICA)], the Committee notes that 30 dismissed workers have court cases pending with the 20th Labour Court of the Bogotá Circuit, seeking reinstatement. The Committee requests the Government to keep it informed in this regard and to send a copy of the rulings handed down.
28. In a communication sent in October 2012, the Government states only that the administrative investigation into the damage to rail installations caused by SINTRAIME (recommendation (a)) and the court cases concerning the status of the 30 dismissed workers (recommendation (e)) are ongoing. It reiterates that SINTRAIME's allegations concerning the disappearance of the president of one of its branches are not borne out by the facts, such

as the various judicial proceedings brought by the trade union official. Concerning the refusal to negotiate the list of demands, the Government states that the dispute has been resolved through an arbitral award, confirmed by the Supreme Court, and attaches copies of the relevant judgments.

29. *The Committee takes note of the information provided by the Government. However, it observes that, despite its stated intention to do so, the Government has not sent any information on the outcome of the administrative investigation into the damage to rail installations caused by SINTRAIME (recommendation (a)) and the court cases concerning the status of the dismissed workers (recommendation (e)). In addition, the Committee observes that the Government did not provide any information on the alleged arrests of striking SINTRAIME members and possible existence of penal charges against them (recommendation (c)). The Committee urges the Government to supply this information promptly.*

Case No. 2895 (Colombia)

30. The Committee considered this case at its session in March 2013 [see 367th Report, paras 508 to 531], and on that occasion made a recommendation requesting information on the judicial proceedings concerning the decision to dissolve the Workers Trade Union of the Department of Risaralda (STDR), with respect to the reduction in the number of workers below the minimum required by the national legislation in order to be registered as a trade union.
31. By a communication of May 2014, the Government, attaching copies of the relevant judgments, reported that the Second Labour Court of the Pereira District had issued a ruling ordering the dissolution of the trade union organization, which had been upheld by the Labour Chamber of the High Court of Pereira.
32. *Having noted the information provided by the Government and the related court decisions, the Committee will not pursue its examination of this case.*

Case No. 1865 (Republic of Korea)

33. The Committee has been examining this case since its May–June 1996 meeting and on the last occasion at its March 2014 meeting [see 371st Report, paras 44–53, approved by the Governing Body at its 320th Session]. On that occasion, the Committee trusted that the Government would soon be in a position to lift the ban on wage payment to full-time union officers and to ensure that no one is sanctioned for having entered into an agreement in this regard. In the meantime, the Committee requested the Government to provide detailed information on the manner in which the maximum time-off limits, which allow employers to pay for the time necessary for union activities, are applied in practice as well as on any complaint of unfair labour practices received. The Committee further took note with deep concern of the decertification of the Korean Teachers and Education Workers' Union (KTU), the refusal to register the Korean Government Employees' Union (KGEU) for the fourth time and the allegations relating to the searches and seizures of KGEU servers. Recalling that ever since their enactment in 1997, it has requested that the Government take the necessary measures to amend or repeal the provisions in the Trade Union and Labour Relations Adjustment Act (TULRAA) prohibiting dismissed workers from being union members, the Committee observed that the Act on Establishment and Operation of Trade Unions for Teachers (AEOTUT) and the Act on Establishment and Operation of Public Officials Labour Unions (AEOPOLU) contain similar provisions and urged the Government to take the necessary measures to amend the provisions restricting trade union membership and to keep it informed of all steps taken to facilitate the registration of the KGEU and ensure

the recertification of the KTU without delay. The Committee further urged the Government to provide detailed information in reply to all the allegations set out in the 1 December 2013 communication from the International Trade Union Confederation (ITUC), Education International (EI), the Korean Confederation of Trade Unions (KCTU) and the KTU. Finally the Committee once again requested the Government to provide full observations on the previous allegations of interference in the negotiations between unions and employers and to indicate the reasons for the unilateral termination of binding collective bargaining agreements that took place at the Korea Railroad (hereinafter, the railway company), the National Pension Service (hereinafter, the pension service) and the Korea Gas Corporation (hereinafter, the gas company) and to indicate the steps taken to bring section 314 of the Penal Code into line with the principles of freedom of association.

- 34.** In a communication dated 25 July 2014, the KCTU, the KGEU, the Korean Teachers and Education Workers Union (JeonKyojo, KTU) and the ITUC provide additional information in relation to several aspects of the case. With regard to the refusal to register the KGEU and the related judicial proceedings the complainants indicate that in a ruling issued on 24 April 2014, the Seoul Administrative Court upheld the decision of the Ministry of Employment and Labour (MOEL) to reject the establishment report of the KGEU submitted on 2 August 2013. The complainants further indicate that on 23 April 2014 the Supreme Court ruled in favour of the MOEL with regard to the rejection of the KGEU's establishment report submitted on 25 February 2010, when the union was newly established by merging three unions of Government employees. The Supreme Court stated that the MOEL's decision was just on the grounds that the existing laws do not allow dismissed workers to join or represent trade unions. The complainants provide copies of both judgments.
- 35.** As for the KTU's decertification, the complainants indicate that the KTU sought a temporary injunction to suspend the Government's decision to cancel its certification. The injunction was granted by the Seoul Administrative Court on 13 November 2013; however, when the case was heard on merits, the Seoul Administrative Court dismissed the union's case and upheld the decision to cancel the certification on 19 June 2014. Two hours after the decision was rendered, the MOEL announced a series of enforcement measures, including: the cancellation for leave of absence of 72 full-time union officials, which were ordered to be reinstated to work; a request to the KTU to move out of the offices provided to the union or to return the subsidies for the offices; the suspension of the ongoing collective bargaining negotiation with the KTU and termination of existing collective bargaining agreements (CBAs); the suspension of the check-off of union dues; and the discreditation of members from the KTU in various committees established under the collective bargaining agreements. The Ministry convened a meeting of the Education Commissioners of the Office of Education in each city and province on 23 June 2014 to supervise implementation of the aforementioned measures. On 27 June 2014 a rally was organized to protest the decertification of the KTU, 1,500 teachers left school early to be present. The Ministry of Education (MOE) announced the rally was an illegal collective action and brought charges against the teachers present.
- 36.** In a communication dated 14 January 2015, the Government indicates that on 26 December 2013 the Seoul High Court dismissed the appeal against the Administrative Court injunction suspending the MOEL's decision to cancel the registration of the KTU, so that the KTU was able to maintain its legal status until the first ruling on the merits. This ruling was issued on 19 June 2014, when the Seoul Administrative Court (court of first instance) dismissed the KTU's request of revocation of the decertification decision. The Government specifies that the Court held that the cancellation of registration was lawful since the KTU had violated the AEOTUT by allowing union membership for dismissed workers under its by-law and kept dismissed workers as active members. This ruling once again confirmed the Court's stance that the scope of membership of public officials and teachers' unions should be limited to workers currently in service. The Government further indicates that on 23 June

2014 the KTU appealed to the Seoul High Court (court of second instance) and on 10 July applied for an injunction suspending the ruling of the court of first instance until the appeal ruling is issued. The injunction was granted on 19 September 2014, and on 22 September the MOEL appealed against it. The Government further reiterates its previous general indications with regard to registration of trade unions and the specific status of teachers as governed by article 2 of the AETOUT and emphasizes that the Constitution of the Republic of Korea has a specific provision on the right to organize and collective bargaining of public officials (article 33(2)) which, read in conjunction with article 33(2) of the State Public Officials Act (SPOA) – allows only current public officials to join trade unions. The Government once again affirms that the KTU can restore its legal status at any time if it voluntarily corrects its illegality by amending its by-law and by removing dismissed workers from the union.

- 37.** With regard to the allegation related to measures taken against teachers who participated in the 27 June 2014 rally, the Government admits that the MOE reported 36 teachers in relation to the “early-leave” protest held in Seoul on 27 June 2014, on the basis of article 234(2) of the Criminal Procedure Act, on the grounds that the teachers who planned and pushed ahead with the protest undermined the political neutrality of education and violated article 66(1) of the SPOA. The Government further indicates that on 16 July 2014, the KTU filed a complaint with the National Human Rights Commission of Korea (NHRCK), requesting the Commission to declare that the MOE accusations against union members who participated in the early-leave protest was unconstitutional and illegitimate.
- 38.** With regard to the denial of the KGEU’s registration, the Government recalls that after its application for registration was rejected, the trade union filed a lawsuit with the Seoul Administrative Court, requesting the revocation of the rejection decision, dismissed by the Court on 24 April 2014. According to the Court’s reasoning, the members of the public officials’ unions should be limited to “those who currently have the status of public official”. Denial of registration was legitimate as article 7(2) of the KGEU’s by-law allows dismissed workers to become union members.
- 39.** In a communication dated 2 February 2016, the KTU, the KCTU, EI and the ITUC submitted additional information with regard to the decertification of the KTU by the MOEL. The complainants indicate that on 28 May 2015, the Constitutional Court affirmed the constitutionality of section 2 of the AEOTUT despite the recommendation of the Committee on Freedom of Association that the Government repeal the provisions in the TULRAA, the AEOTUT and the AEOPOLU which prohibit dismissed workers from being members of trade unions. Based on this decision, the Seoul High Court upheld the decertification of the KTU on 21 January 2016. The complainants further indicate that on the same day of 21 January, the MOE requested the Metropolitan and Provincial Offices of Education to take measures based on the High Court ruling and to deprive the KTU of the rights it had enjoyed as a legal trade union, namely the permission of leave of absence for full-time union officials, union offices provided by the Education offices, check-off facilities, ongoing collective bargaining and CBAs and designated seats in various committees according to CBAs.
- 40.** In a communication received on 1 May 2017, the Government provides additional information on the judicial proceedings relating to the legal status of the KTU and the implementation measures taken by the MOE. The Government indicates that on 21 January 2016, the Seoul High Court upheld the MOEL’s decision that the KTU was no longer deemed a legal union, as it offered membership to the dismissed teachers who were already serving as its members under its by-law, in contravention of the AEOTUT. Reiterating its January 2015 observations, the Government adds that on 1 February 2016 the KTU filed an appeal against the Seoul High Court’s second-trial ruling, requesting a suspension of execution, and this case is currently pending before the Supreme Court. The Government further indicates that until the Court makes a final ruling that suspends the effect of the

government decision to strip the KTU's legal status or overturn the decision, the KTU is not a legal "trade union", therefore the MOE's action as a follow-up to the Seoul High Court ruling is legitimate and justifiable in accordance with the court ruling, the Constitution of the Republic of Korea and relevant laws.

41. The Government further indicates that while the "dissolution order" under the previous Trade Union Act was an order to disband the union itself, the "decision to make an organization lose its legal union status" does not automatically lead to the disbandment of that organization. It simply means that the organization no longer enjoys legal rights (e.g. full-time union officials, collective bargaining and agreements) that it used to enjoy as a legal union. Thus, the Government's decision to strip the KTU of its legal status and the court's ruling that the decision is legitimate cannot be seen as the restoration of the union dissolution order as argued by the complainants. The court has also ruled, "the dissolution order", being an order to disband an organization itself, under the previous Trade Union Act is different from the decision made in this case, which is simply not to recognize the organization as a union under the current TULRAA.
42. *The Committee takes note of the information provided by the complainants and the Government. It notes with deep concern that seven years after the KGEU first applied for registration, the Government continues to deny the trade union's application on the grounds that its by-laws allow for the membership of dismissed workers; and that the KTU's request for invalidation of the decision to decertify it on similar grounds, has also been rejected for incompatibility with article 2 of the AETOUT. The Committee is bound to recall its long-standing position, that while States may legitimately take measures to ensure that the Constitutions and rules of trade unions are drawn up in accordance with the law, any legislation adopted in this area should not undermine the rights of workers as defined by the principles of freedom of association. A provision depriving dismissed workers of the right to union membership is incompatible with the principles of freedom of association since it deprives the persons concerned of joining the organization of their choice. Such a provision entails the risk of acts of anti-union discrimination being carried out to the extent that the dismissal of trade union activists would prevent them from continuing their trade union activities within their organization [see 353rd Report, Case No. 1865, para. 720]. This principle applies to all workers without distinction, including public servants and teachers. In view of these principles, the registration condition imposed on the KGEU and the KTU to amend their by-laws and exclude the membership of dismissed workers constitutes an infringement of the right of those organizations to draw up their constitutions and rules [see Report No. 363, Case No. 1865, para. 125]. The Committee understands that as long as the legislative provisions prohibiting the union membership of dismissed public officials and teachers remain in force, the judiciary and executive branches of the Government will continue denying the KGEU and the KTU legal status. Considering that its previous recommendation to this effect are yet to be implemented, the Committee once again firmly requests the Government to take the necessary measures without delay to repeal the provisions in the TULRAA, the AEOTUT and the AEOPOLU that prohibit dismissed workers from being trade union members and to provide detailed information on developments in this regard.*
43. *The Committee notes that according to the information provided by the complainants and the Government, the teachers who participated in the 27 June 2014 rally have been denounced by the MOE on the basis that the rally was an illegal collective action. The Committee notes that the complainants indicate that the rally was a protest against decertification of the KTU, while the Government, without contradicting the statement of the complainant with regard to the aim of the rally, indicates that the MOE reported 36 participants on the grounds that the teachers who planned and pushed ahead with the protest undermined the political neutrality of education and violated article 66(1) of the SPOA. The Committee recalls that the right to organize public meetings constitutes an*

important aspect of trade union rights. In this connection, the Committee has always drawn a distinction between demonstrations in pursuit of purely trade union objectives, which it has considered as falling within the exercise of trade union rights, and those designed to achieve other ends [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 134]. The Committee considers that the objective of the rally against the decertification of the teachers' trade union was clearly aimed at protecting the workers' right to organize. The Committee requests the Government to ensure that the charges against the teachers who participated in the 27 June 2014 rally will be dropped and requests the Government and the complainant to keep it informed of the developments in this regard and to provide information on the determination by the NHRCK.

44. With regard to the prohibition of wage payment to full-time union officials and the paid time-off system, the Government reiterates that the driving motivation behind this ban is to prevent risks of infringement of the autonomy of trade unions and to exclude any interference of the employer in trade union activities, assuming that full-time union officials who receive wages from the employer might find it difficult to place the interests of the union before their own at the bargaining table.
45. The Government reiterates that under the current TULRAA the payment of wages to a full-time union official is prohibited, and constitutes an unfair labour practice for which the employer is penalized. In reply to the Committee's request as to provide information on any complaints of unfair labour practices received, the Government indicates that the MOEL, together with regional labour offices, is conducting annual joint inspections to monitor the implementation of the time-off system. Punishment and corrective measures are given in accordance with relevant regulations. For example, after receiving the complaint in April 2012, that the management of a company paid wages to the leadership of their trade union, in violation of section 81(4) of the TULRAA, the Ministry prosecuted the case and the court ordered the company to pay fines.
46. As for the Committee's request to provide full observations on the previous allegations of interference in negotiations between unions and employers and to indicate the reasons for the unilateral termination of binding collective bargaining agreements that took place at the railway company, the pension service and the gas company, the Government indicates that a collective agreement prescribing that the employer pay wages to full-time union officials or provide operating expenses beyond the provision of a union office is determined to be unlawful and is thereby subject to a corrective order (section 31(3) of the Act). Collective agreements in violation of the law must be amended, and there are no grounds to the claim that a corrective order against an unlawful practice instigates unfair labour practices. The Government further stresses that it is respecting the autonomy of management and labour in advancing public organizations and that it conducts assessment on the business management of public organizations in a reasonable manner, without intervening in the establishment of trade unions and its basic characteristics, to make sure that the organizations provide public services smoothly. Therefore, the allegation that there was interference by the Government in bargaining between management and trade unions is not valid. Finally, the Government indicates that as of December 2014, the management and labour of the pension service, the gas company and the railway company reached a valid collective agreement.
47. With regard to the ban on the payment of wages to full-time union officials, the Committee notes with regret that the Government continues to exclude the issue of payment of wages to full-time union officials from the scope of free and voluntary negotiations between workers and employers, subject to sanctions. The Committee is bound to recall that the regulation of relations between employers and workers organizations and the facilities provided to the workers' representatives fully enter in the scope of subjects covered by collective bargaining, and, as the Committee has reiterated on several occasions [see 363rd Report,

Case No. 1865, para. 110 and 371st Report, Case No. 1865, para. 47], the payment of full-time union officers should be a matter of free and voluntary negotiation between the workers and employers or their respective organizations. As regards the Government's concerns relating to the autonomy of trade unions, the Committee considers that, should it be found in a specific case that the employer is interfering in the internal affairs of the trade union by financing its members so as to bring it under the employer's domination or control, such action should be sanctioned on the basis of the evidence. Sanctioning an employer for paying wages to a full-time union officer in accordance with a collective agreement freely entered into, without any evidence or even complaint as to the interference or any attempt on the part of the employer to bring the union under its control, is an unacceptable restriction to free collective bargaining that does not in any way serve the purpose of protection of trade unions against employer interference. The Committee therefore once again requests the Government to lift the ban, to ensure that no one is sanctioned for having entered into an agreement in this regard, and to refrain from requiring the parties to collective agreements that provide for the payment of wages to full-time union officers to amend their agreement.

48. In their communication of July 2014, the KCTU, the KGEU, the KTU and the ITUC also provide follow-up information on the allegation of unjust disciplinary measures against KGEU members of the National Human Rights Commission (NHRC) chapter, first made in their communication dated 28 October 2011. Recalling that in 2011 the chapter Vice-President received a notice of termination of employment on the ground that she had criticized the Chairperson of the NHRC, and that 11 union members who after her termination participated in one person picketing during lunchtime and contributed articles to online media to object to unfair terminations and anti-democratic policy were subject to disciplinary action for violation of "duty to maintain dignity and prohibition of collective action" in accordance with State/Local Public Officials' Act, the complainants indicate that the Administrative Court dismissed the union members' appeal against the disciplinary measures in 2014.
49. The complainants provide the judgment of Seoul Administrative Court dated 2 May 2013, rejecting the union members' appeal, which indicates that the ground for disciplinary action against the 11 union members was: (i) engagement in a one-person picketing in relays, expressing criticism over NHRC's decision in refusing to renew Kang Inyeong's employment contract; (ii) contribution to the media called OhMyNews and posting the same article on NHRC's intranet; and (iii) displaying the pickets at the first floor lobby as well as on the sidewalk. The disciplinary measures taken included one month suspension and one to three months' pay cut. The Court upheld the disciplinary measures taken by the NHRC, confirming that, through picketing and publishing articles disclosing information on an internal conflict of NHRC, the plaintiffs had indeed violated the prohibition of collective activities other than public services described in article 66(1) of the SPOA and their duty to maintain dignity in accordance with article 63 of the SPOA. In particular, with regard to the latter ground, the court found it reasonable to infer that the conduct of the plaintiffs might have caused the public to raise doubts about fairness and integrity of all public officials of the NHRC, entailing concerns about loss of public confidence in government administration.
50. The complainants further allege that judicial actions were taken against union leaders on the ground of their performing legitimate trade union activities. On 24 May 2014, 30 persons, including Mr Yoo Ki-Soo, general secretary of the KCTU, were arrested during a march calling on the Government to take responsibility for the Sewol ferry disaster. The complainants indicate that nearly 300 persons died in the incident, which the protestors argued was the result of deregulation and poor government oversight of industrial health and safety. The march followed a KCTU rally and a candlelight vigil organized by the "Korean People's Council for Measures on the Sewol Ferry Disaster" in which trade unions participated. On 27 May 2014, the prosecutor's office requested warrants for the detention of three persons out of the 30 arrested, including Mr Yoo Ki-Soo and Mr Ahn Hyun-ho,

Publications Director of the KGEU and reporter of online media U-Public, a KGEU publication. Mr Ahn is a dismissed worker and a member of the KGEU Seoul Metro chapter. The prosecution insisted that Mr Yoo must be detained during the investigation, on the grounds that his residence was not fixed due to frequent business trips to meet KCTU members (while he has a fixed residence), and that there was reasonable ground that he might destroy evidence or flee. The prosecution also emphasized that the crime he committed was serious and could be repeated and he might harm the police officer who had arrested him. As for Mr Ahn, the argument in support of detention was that he might distort public opinion by writing biased articles on the Sewol ferry disaster. The Seoul Central District Court accepted these arguments and issued detention warrants against the two union officials on the same day. On 29 May 2014, Messrs Yoo and Ahn were transferred to the Seoul Detention Centre. On 2 June 2014, they requested the Court to review the legality of the detention warrant; the Court dismissed the case and reaffirmed their confinement on 12 June. The complainants allege that the ferry disaster was directly related to government policy concerning occupational health and safety, and that deregulation in the transport sector has led to several recent accidents. Therefore unions are well within their rights to protest over this issue. Furthermore, members of the KCTU and the Federation of Korean Trade Unions (FKTU) were also directly affected by the ferry disaster. The complainants conclude that the move to arrest 30 union leaders and members for participation in a peaceful rally and march related to an industrial disaster is an unambiguous and serious violation of the right to freedom of association and it appears that the Government's motive is to harass and intimidate the trade union movement and to send a clear message that it will not tolerate dissent.

51. The complainants further indicate that in May 2014, 123 teachers had written posts on the website of the presidential office denouncing President Park Geun-hye and requesting her resignation for the Government's poor handling of the April ferry disaster. On 2 July 2014, the teachers issued a written statement demanding the President's resignation. The MOE accused those teachers of exercising "political activities", which resulted in a seizure of the KTU's servers on 15 and 16 July. On 16 July, the KTU presented a petition to the NHRC calling for the MOE to cancel its plan to take disciplinary actions against the teachers who participated in the online statement demanding the resignation of the President. The complainants allege that after outlawing the union, the Government is limiting the teachers' freedom of expression by taking disciplinary measures against teachers.
52. In its communication of January 2015, the Government provides a summary of facts and the outcome of proceedings which concurs with the one presented by the complainants with regard to the disciplinary action against the KGEU members, the NHRC chapter, and adds that trade union members had appealed to the Supreme Court. The Government states that the ruling dismissing the request against the disciplinary action shows the stance of the court that although public officials as individuals enjoy freedom of association and expression, they should respect the limitation of their freedoms as public officials with an obligation to protect public interests.
53. With regard to the allegation of judicial action against KCTU and KGEU members and leaders who participated in the 24 May 2014 protest over the Sewol ferry incident, the Government indicates that while most protesters complied with the law, a group of some 1,000 persons went off their official course and obstructed traffic by blocking the main roads near Cheonggye Square, did not comply with the police's legitimate dispersion order and inflicted violence on policemen in uniform, making their protest illegal and violent. Hence, 30 persons were arrested on the spot for general obstruction of traffic and obstruction of performance of official duties. The Government further specifies that Mr Yoo was arrested for violating article 144 of the Penal Code (aggravated obstruction of public duty, involving violence), as well as article 185 (general obstruction of traffic); and Mr Ahn was charged with violation of articles 136 (obstruction of performance of official duties) and 257

(infliction of bodily injury) of the Penal Code. During the investigation process, the police and the prosecution requested the court to issue detention warrants which were granted. Mr Yoo and Mr Ahn's subsequent requests of review of the legality of their detention were rejected by the Seoul District Court. Emphasizing that the 30 persons arrested had violated the laws of the Republic of Korea and the measures taken against them complied with the relevant laws and principles, the Government indicates that 28 persons were released soon after their arrest, while the trials of Mr Yoo and Mr Ahn were pending.

- 54.** Concerning the posting of the “Declaration of the Teachers” on the website of the Office of the President, urging the administration to step down on 13 and 28 May 2014, the Government indicates that the MOE reported 43 and 80 teachers for violating the prohibition of political activities. The Government furthermore states that the MOE also reported 71 teachers who held a press conference at KTU headquarters on 2 July 2014 and announced the “Declaration of Teachers” calling for the President’s resignation and adds that the case was under investigation by the prosecutor or other criminal procedures.
- 55.** With regard to the allegation of search and seizure of the KTU’s web server, the Government indicates that as the investigative agency concluded that there existed sufficient evidence to believe that KTU members, including the President, violated article 66(1) of the SPOA by engaging in collective activities which did not constitute teachers’ public duties, the prosecutors found it necessary and appropriate to secure data related to the allegation. The search and seizure was conducted with reliance on a judge’s warrant and in accordance with Korean law.
- 56.** With regard to the allegation of search and seizure of KGEU’s servers, the Government once again emphasizes that public officials have a duty of political impartiality in carrying out their duties and with the exception of taking action and expressing their opinions as union members on economic and social issues that are directly linked to their interests, they are prohibited from engaging in political activities as union members. Indicating that the search and seizure of the KGEU was conducted in order to investigate the alleged violation of article 65 of the SPOA or article 57 of the Local Public Officials Act, the Government indicates that the freedom of expression of public officials’ trade unions as well as their right to organize and collective bargaining are guaranteed within the scope of the current laws. The search and seizure was not intended to restrict or infringe upon trade union rights; it was only a part of the investigation on whether the state or local public officials had violated the law.
- 57.** With regard to the allegations of dismissal of KTU members for their activities, including expression of their opinions on the Government’s education policy or for one-off donations to progressive political parties, the Government indicates that article 7(2) of the Constitution of the Republic of Korea establishes the duty of political impartiality of public officials and limits their political activities, including participation in partisan activities and electoral campaigns, in order to prevent their serving the interests of a certain faction or a specific party. With regard to the teachers’ trade unions, the Government states that considering that the purpose of a union under the current TULRAA and AEOTUT is to improve the worker (teacher)’s economic and social status, the teachers’ trade unions have the right to express views on economic and social policy issues that directly impact the union members’ interests, but are prohibited from expressing political views related to a specific political party or power in order to influence the Government’s policy-making process. The Government cites Supreme Court Decision 2010Do6388, 19 April 2012, in support of this reading of the applicable law and concludes that it was inevitable that the teachers experienced disadvantages as a result of violation of this law and that the measure taken against each individual teacher did not aim at oppressing the political activities of trade unions, but to punish the violation of law by each individual teacher. More specifically, the Government indicates that the freedom of expression of elementary and middle-school

teachers is limited in order to protect the young students who have not yet established their own values against indoctrination attempts. The Government admits that in 2010, eight teachers were dismissed or discharged for providing funds and contributions to the Democratic Labour Party, but all were reinstated as the Court found the disciplinary action was excessive and cancelled the decisions. Furthermore, in 2011 another 1,352 teachers were under indictment for violation of laws such as the SPOA through funding the Democratic Labour Party, and 25 persons among them whose disciplinary limitation periods had not expired were subjected to disciplinary measures. With regard to the disciplinary measures against KTU members for expressing political views, the Government admits that during the last administration, 12 teachers from the KTU were dismissed for refusing the National Assessment of Educational Achievement of 2008, 16 were dismissed for joining the “2009 Declaration of Teachers”, and eight were dismissed for supporting the Democratic Labour Party. However, they were all reinstated after the Court ruled that their dismissals constituted excessive disciplinary action. The Government further admits that in total, disciplinary action was taken against 83 teachers in relation to the “2009 Declaration of the Teachers” which, in addition to the 16 dismissals referred to above, resulted in 47 suspensions, three pay cuts and 17 warnings. The Government indicates that the court approved the grounds for these MOE disciplinary measures and imposed monetary penalty.

58. *The Committee takes due note of the information provided by the complainants and the Government. With regard to the disciplinary measures taken against KGEU members of the NHRC, the Committee understands that those measures were taken on the grounds of violation of prohibition of collective activities and the duty of dignity applying to public officials. The Committee notes with concern that 11 union members have been subject to disciplinary measures, partly for engagement in one-person protests picketing in relays at lunchtime over the dismissal of the union chapter’s Vice-President. Noting that at the time of the communication the case was pending before the Supreme Court, the Committee requests the parties to keep it informed of the outcome of those proceedings and to communicate a copy of the judgment.*
59. *With regard to the allegations of arrest and indictment of 30 participants in the 24 May 2014 protest related to the Sewol ferry incident including two KCTU officials, the Committee notes that the Government and the complainants present diverging accounts of the facts: while the complainants state that judicial action was taken against union officials for their legitimate trade union activities, the Government affirms that those arrested and indicted resorted to violence and obstructed traffic and the fulfilment of the duties of the police. In view of the disputed facts, the Committee would simply recall the general principle that while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists [see **Digest**, *op. cit.*, para. 72], and to request the parties to provide information on the pending judicial proceedings, including copies of the judgments once they are rendered.*
60. *With regard to the observations of the Government on the prohibition of political activities of public officials and teachers, presented as a valid ground for disciplinary measures and search and seizure of trade unions’ servers, the Committee observes that this issue has been raised by the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards in the framework of the application of Convention No. 111. With regard to the impact that the prohibition of political activities might have on the exercise of freedom of association, the Committee recalls that while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government’s economic and social policies [see **Digest**, *op. cit.*, para. 529]. The Committee reiterates its previous observation with regard to the relevant legislative provisions in the Republic of Korea: while duly noting from its previous*

examination of this provision that the status of public servants is such that certain purely political activity can be considered contrary to the code of conduct that is expected of these servants and that trade union organizations should not engage in political activities in an abusive manner and go beyond their true functions by promoting essentially political interests – the Committee once again requests the Government to ensure that public officials’ trade unions have the possibility to express their views publicly on the economic and social policy questions which have a direct impact on their members’ interests [see 353rd Report, para. 705]. The Committee trusts that the Government will no longer take disciplinary action, in particular, dismissal against public servants for their individual support of a political party or expression of views about government socio-economic policy affecting workers’ interests.

- 61.** *With regard to the allegations of the search and seizure of trade unions’ servers, while taking due note of the indications of the Government that these searches were conducted on the basis of judicial warrant and in accordance with law, the Committee draws the attention of the Government to the principle that such measures should not be taken on the basis of public official trade union views on the economic and social policy questions which would be likely to create a climate of fear and intimidation that would hamper the capacity of trade unions to exercise their functions.*
- 62.** In their communication of July 2014, the KCTU, the KGEU, the KTU and the ITUC also provide the following indications with regard to a police raid on KCTU headquarters on 22 December 2013. According to the complainants, around 5,000 riot police, including some 900 SWAT team members, were deployed on the assumption that six leaders of Korean Railway Workers’ Union (KRWU) who were on the police wanted list were in the office. KCTU headquarters are located in the building of kyunghayung Shinmunsa, a major Korean newspaper. At 9 a.m. the police cordoned off the building and prevented the members of the trade union from entering or leaving. Once the building was surrounded, the police force pushed in to seek the six KRWU leaders. The kyunghayung Shinmunsa – the owner of the building – and the KCTU both pointed out that in the absence of a warrant the search would be illegal, to no avail. Meanwhile, the police also arrested indiscriminately some of the protestors outside the building. The complainants allege that pepper spray was used against the protestors and 138 persons were arrested, including Mr Yoo, Yang Sung-yun and Lee Sang-jin, both Vice-Presidents of the KCTU, and three Presidents of the KCTU affiliates including Mr Kim Jeong-hun, the President of the KTU. All of those arrested were released after being detained for 48 hours except Mr Kim Jeong-hun, against whom the police sought a detention warrant that was not granted by the court. Charges of obstruction of justice were brought against all those arrested. During the search, the police destroyed KCTU’s furniture and fixtures, including almost all of the doors and door locks. None of the persons sought were in the offices. The operation lasted 12 hours. On 15 June 2014, the Seoul Central District Prosecutors Office announced that among the 138 arrested, they had indicted 19 persons including leaders of the KCTU and its affiliates. All of them were indicted without detention except Mr Yoo Ki-Soo who was in detention in relation to Sewol ferry protest. Another 68 were summarily indicted and the others had their indictments suspended.
- 63.** In a communication dated 16 September 2014, the KRWU, the Korean Federation of Public Services and the Transportation Workers’ Unions (KPTU), the KCTU and the International Transport Workers’ Federation (ITF) sent further allegations in relation to the conduct of the Korea Railroad Corporation (Korail, hereinafter the railway company), a government-owned public corporation, and the government agencies during and in the aftermath of the December 2013 strike. The railway company has a workforce of 26,000 directly employed workers; another 35,000 workers are employed through subcontractors.

- 64.** The complainants indicate that the Government made several attempts to restructure and privatize the railway company over the years, the most recent one through the “Plan for the Development of the Rail Industry” (hereafter, the Plan) announced on 26 June 2013. The complainants indicate that the KRWU is the main representative of the employees of the railway company and has a membership of roughly 21,000; it is affiliated to the KCTU (through KPTU), and the ITF. The KRWU has campaigned against the various attempts at railway restructuring and privatization, including the latest one. The campaign against the Plan started as soon as its content became known in early 2013. It was carried out together with the KPTU, KCTU, civil society organizations and opposition political parties and included public forums in and outside the National Assembly, petition drives against rail fragmentation and privatization, outreach to citizens and public protests. The KRWU approached the Ministry of Land, Infrastructure and Transport (MOLIT) several times with a request to halt execution of the Plan and discuss alternatives, but the Government insisted that the basic direction and content of the Plan were non-negotiable and in a meeting with the presence of the ITF, a MOLIT representative stressed that “this is the last chance to reform the railway company and we shall not delay the implementation”.
- 65.** The complainants recall a previous complaint submitted to the Committee that partly related to a 2009 dispute between the railway company and the KRWU (Case No. 2829), involving allegations such as unilateral termination of KRWU’s collective agreement, inappropriate application of section 314 of the Penal Code, a compensation for damages lawsuit and disciplinary actions taken against roughly 12,000 members and officers of the union who participated in a strike in 2009, including 169 dismissals. The complainants recall that on that occasion, the Committee had urged the Government to take all the necessary measures to bring section 314 of the Penal Code into line with freedom of association principles, and requested the immediate dropping of criminal charges brought under that provision against union officials and members, the immediate reinstatement of dismissed trade union officials as well as the lifting of disciplinary measures [see 365th Report, para. 582].
- 66.** With regard to the background and the aftermath of the December 2013 strike, the complainants present the following facts: the KRWU held a vote on undertaking industrial action against the Plan from 25 to 27 June 2013 where a large majority of members voted in favour should the railway company take concrete steps to execute the Plan. On 18 July 2013, the KRWU officially proposed bargaining on wage and workplace issues, including issues related to the execution of the Plan, to the company management. Between then and 9 December 2013, five full bargaining sessions and ten working-level bargaining sessions were carried out, with little progress. On 12 November 2013, the KRWU applied to the National Labour Relations Commission (NLRC) for mediation. On 27 November, the breakdown of the mediation was declared. The KRWU carried out a second vote on industrial action in relation to wage bargaining from 20 to 22 November 2013 and a large majority of workers once again voted in favour.
- 67.** On 1 December 2013, the railway company announced plans to train replacement workers in preparation for the strike and on 4 December 2013 sent a memorandum to the Ministry of National Defence requesting the dispatch of military locomotive engineers as replacement workers. The Ministry responded on 5 December 2013 by sending a list of the names of 155 locomotive engineers who would be dispatched in the event of a strike. The same day, the company released a press statement labelling the strike illegal and announcing plans to respond strictly including through the use of replacement workers. The Law considers the railway to be an essential service and minimum services must be provided as defined by an agreement between labour and management. In compliance with this requirement, the KRWU prepared for the strike by compiling a list of members who would stay on the job to fulfil the minimum service requirements and submitted it to the company on 3 December 2013. On the same day, the union held a press conference announcing its plans to strike in

parallel with the railway company Board of Directors meeting to vote on the establishment and investment in a stock company.

- 68.** The KRWU began its national indefinite strike at 9 a.m. on 9 December 2013. The following day, the railway company Board of Directors voted in favour of the establishment and investments in the stock company. Leading up to and during the strike, the ITF and the ITUC sponsored a petition and took a variety of actions urging the Government and the railway company to desist from labour rights violations against the striking rail workers, whose number amounted to 15,000. The complainants indicate that the strike ended after 23 days, making it the longest rail strike in Korean history. On 30 December 2013, an agreement was reached between the opposition and ruling parties' national assembly members to form a subcommittee on the development of the rail industry within the Committee on Land, Infrastructure and Transport in the National Assembly. Following this agreement, the KRWU President issued a directive to all members to return to their workplaces, thus ending the 23 day strike on 31 December. The complainants further indicate that the KRWU carried out a one-day strike on 25 February 2014 to achieve wage bargaining demands and call for redress of fundamental labour rights violations in relation to the December strike.
- 69.** With regard to the legality of the strikes, the complainants indicate that the KRWU followed all necessary procedures for a legal strike including carrying out a membership vote, engaging in bargaining and applying for mediation to the NLRC and only went on strike after the breakdown of mediation. Moreover, the KRWU followed all the requirements relating to the provision of a minimum service, despite being fully aware that the classification of railway services as an essential service is contrary to international labour standards. The complainants further indicate that while under Korean law strikes that concern government policy, as opposed to those concerning wages and/or working conditions, can be considered illegal, it has been the long-standing view of the ILO that workers are permitted to strike over issues of social and economic policy. Moreover, it can be concretely argued that the Plan would have a deep impact on the working conditions and wages of KRWU members. Nonetheless, the railway company released an official statement promising strict response and labelling the strike illegal before it started, without any court ruling on the legitimacy of the strike.
- 70.** With regard to the measures taken by the railway company against the strike and the strikers, the complainants indicate that as soon as the strike began on 9 December 2013, the railway company announced it would remove all striking workers from their job positions. These actions were taken against over 8,600 KRWU members (the entire number who participated in the strike). Starting with the Seoul Regional Labour Relations Commission (LRC) on 2 June 2014 and ending with the Northern Jeolla Regional LRC on 30 June 2014, a total of eight regional LRCs found the removal of workers from their position during the strike to be unjust. In addition, after the start of the strike, the railway company pressed charges of obstruction of business against 176 officers of the union, including the central leadership. Following the one-day strike on 25 February 2014, the company pressed charges of obstruction of business against an additional 92 KRWU officers in relation to this action. Finally, the complainants allege that during the December 2013 strike, the company used over 6,000 replacement workers including retired workers, trainees and members of the military dispatched by the Ministry of Defence. In addition to being a violation of freedom of association, the use of replacement workers posed a serious safety risk. Several accidents occurred as a result, including one which led to the death of an elderly passenger on 15 December 2013.
- 71.** The complainants also provide indications on measures taken by the police and prosecution authorities, in relation to the strike, against the KRWU and its officials and members. They allege that during the strike, the police and prosecutors obtained search warrants and raided the KRWU headquarters in Seoul and regional offices in Seoul, Busan, Daejeon, Yeongju

and Suncheon on 17 and 19 December 2013, downloading files from the union's computers and confiscating union property. The complainants allege that given that all of the union's outreach materials, publications, meeting documents and other information related to the goals and process of the strike were public, it appears these actions were meant to intimidate and stigmatize union members. The police also seized records of social media applications used by KRWU members for personal communications.

- 72.** The complainants further indicate that on the basis of railway company's charges of obstruction of business, demands to appear at the police stations for questioning were sent to union officers every other day or daily from the outset of the strike. Despite the fact that the union officers submitted written commitments expressing their intention to comply with questioning following the end of the strike, the prosecutors began to apply for and obtained arrest warrants against 35 KRWU officers. Warrants were issued against the central leadership (President, first Vice-President, general secretary, regional division leaders, etc.), and the presidents of branches to which locomotive drivers belonged and the branches in which a high portion of members were participating in the strike. Of the 35 officers for whom arrest warrants were issued, five were arrested during the strike and the rest when they voluntarily turned themselves in for questioning after the end of the strike.
- 73.** In addition, the complainants state that on 22 December 2013 (during the strike), the police raided the headquarters of the KCTU, where the leadership of the KRWU was thought to be staying following the issue of arrest warrants for them. Some 5,000 police forces surrounded the Kyunghayung Newspaper building where KCTU headquarters are located and stopped people from entering the building under the pretext of executing arrest warrants against KRWU leaders. The police proceeded with this operation without a specific warrant. Excessive force was used as the police broke the glass pane and bearings of the front door, entered the building and made their way up to the top floors where KCTU offices are located. The police searched and damaged facilities, furniture and documents in KCTU headquarters. Some 137 citizens and KCTU members who were protesting outside the building were arrested and despite the fact that a rally permit had been granted for the sidewalk in front of the building, the police blocked the sidewalk and the street, stopping citizens from getting to the rally site.
- 74.** The complainants indicate that 30 officers of the KRWU for whom arrest warrants were issued during the December 2013 strike voluntarily turned themselves in to the police in two groups, on 4 and 14 January 2014, respectively. The second group included the KRWU's President, first Vice-President, general secretary and Seoul regional division President as well as nine other officers. The court turned down applications for detention warrants against most union officers arrested after the strike on the grounds that the police and prosecutors' actions were excessive. The KRWU filed an objection to the validity of the detentions of two officers who had been detained during the strike based on these later decisions and they were released on 9 January 2014. However, detention warrants for the KRWU President, Vice-President, general secretary and Seoul division President were granted on 16 January 2014 and they were detained and later released on bail on 2 February 2014.
- 75.** Furthermore, the complainants provide indications as to civil lawsuits undertaken against the KRWU and its officers in relation to the strikes. Accordingly, the railway company is now pursuing a lawsuit against the KRWU and 187 of its individual officers for damages amounting to 16.2 billion Korean Republic won (KRW) (approximately US\$16 million). The damages include a KRW1 billion (US\$990,000) claim for the damage inflicted on the company's brand value as a result of the December 2013 strike. In addition, the company is considering filing a KRW8 billion (US\$7.9 million) lawsuit in relation to the February 2014 strike. On 27 January 2014, the court accepted the company's request for a temporary seizure of the KRWU's assets up to KRW11.7 billion (roughly US\$11 million) as a guarantee measure related to the current damage suit and a previous one (KRW7.8 billion from the

December 2013 strike and KRW3.9 billion from a previous suit in relation to the KRWU's strike in 2009). Currently the KRWU's bank account holding membership dues is frozen up to KRW10.5 billion (US\$10 million), while the union's real estate worth KRW1.1 billion (US\$1 million) is also under provisional seizure. The complainants add that the railway company is considering an application for an additional provisional seizure of assets worth KRW13 billion (US\$12.8 million) in relation to claimed damages related to the later stages of the December 2013 strike and the February 2014 strike. The complainants affirm that these financial suits combined with the fines prescribed for under the obstruction of business provision not only pose a severe financial threat to the very existence of the union, they also have an intimidating effect and inhibit legitimate trade union activities.

- 76.** The complainants further indicate that following the December 2013 strike, the railway company carried out disciplinary hearings against 404 officers and members of the KRWU. Measures were taken in two rounds of disciplinary hearings, respectively, in February and July 2014, in relation to December 2013 and February 2014 strikes and other protest actions undertaken at the beginning of the year. Some of the measures were under review at the time of the communication.
- 77.** Furthermore, on 27 March 2014, the railway company announced plans for the rotating transfer and regular exchange of personnel between regions and occupational categories affecting roughly 3 per cent of the company workforce. The complainants allege that while the company official position has been that these transfers are meant to increase competitiveness through improved efficiency, there are reasons to believe they are being carried out in retaliation for the union's strike actions. The KRWU has pointed out that such transfers, which are not based on any clear standard, actually involve an additional personnel cost, threaten safety by forcing workers to work with train types and in environments with which they are not familiar. The complainants allege that the transfers violate the collective agreement and the Labour Standards Act. Besides, they indicate that the transfers have taken a severe emotional toll on the workers they affect: on 3 April 2014, one KRWU member who had participated in the December 2013 strike and was facing a second transfer, committed suicide. The KRWU has protested the forced transfers through press conferences, rallies, a high-altitude protest carried out by two members, a hunger strike carried out by 50 members and hair-shaving protests in which hundreds of members participated to no avail, as the transfers were still ongoing at the time of the communication.
- 78.** The complainants conclude by drawing the attention of the Committee to the central importance in this case of the misapplication of obstruction of business charges to the KRWU leaders and officials and request that an ILO direct contacts mission be sent to the Republic of Korea with the goal of investigating and finding solutions for the ongoing infringements of fundamental labour rights.
- 79.** In its communication dated 14 January 2015, the Government provides general information with regard to the Committee's request to indicate the steps taken to bring section 314 of the Penal Code – obstruction of business – in line with the principles of freedom of association. The Government first stresses that no employer shall claim damages against a trade union in cases where he/she has suffered damage because of the union's activities (article 3 of the TULRAA) and no criminal liability shall be borne by the trade union if it has engaged in legitimate union activities. However, no act of violence or destruction shall be construed as justifiable (article 4 of the TULRAA). The Government further indicates that courts apply section 314(1) of the Penal Code that punishes "obstruction of business" to acts interfering with the duty of others, through spreading false information, using deceptive schemes and exerting force. According to the Government, the charge of obstruction of business is filed only for labour disputes involving acts clearly violating the Penal Code such as wielding violence and occupying production lines. The exertion of force refers to the power which could suppress or cause confusion in one's free will. A strike as an act of labour dispute that

goes beyond simply refusing to provide labour and amounts to wielding force to stop providing work collectively in order to carry through workers' opinions by putting pressure on employers contains elements which constitute use of force as well. The Government further indicates that the Supreme Court ruled that only strikes that take place unexpectedly and are assessed to have possibly suppressed or confused the employers' free will to continue their business because the strike has created considerable confusion or damage to the business, are considered a crime of obstruction of business (Supreme Court, 17 March 2011, 2007Do482). In conclusion, not even an illegal strike would be subject to punishment on charges of obstruction of business, unless the employer's free will to continue business is likely to have been suppressed or confused. Therefore there is little possibility for the charge of obstruction of business to violate the principles of freedom of association.

- 80.** With regard to the allegations of raid of KCTU headquarters on 22 December 2013, the Government indicates that on 16 December 2013, the police obtained arrest warrants for the railway company union President and other union members who participated in illegal strikes. These warrants could not be executed because the union members fled. On 15 and 18 December 2013, the police learned that the union president and members were hiding inside KCTU headquarters and decided to enter the headquarters on 22 December 2013 to execute the arrest warrants. The Government confirms that the police entered the KCTU building without a separate search and seizure warrant in order to execute these arrest warrants, but argues that a number of provisions of the code of criminal procedure authorize this course of action. Further confirming that 138 KCTU members who obstructed the execution of public duty in direct and active ways were arrested on the spot for special obstruction of public duty, the Government indicates that subsequently measures were taken based on the severity of the crimes, such as a formal trial without detention for 19 people, summary indictment for 68 people, suspension of prosecution for 50 people and stay of prosecution for one person. The Government concludes that the Korean investigative agency performed public duties in a legitimate manner, and took measures in accordance with the law against those who committed crimes by collectively blocking the execution of arrest warrants.
- 81.** The KRWU, the KPTU, the KCTU and the ITF sent additional follow-up information in a communication dated 24 February 2015. With regard to the disciplinary measures against participants in two strikes organized by the KRWU – 9–31 December 2013 and 24 February 2014 – the complainants indicate that following the workers' objection to these measures some of them were overturned in the appeal process before the employer and/or the subsequent review process before the LRCs, while the review of some other decisions is still under way.
- 82.** The complainants further provide the 22 December 2014 ruling of the Western Seoul District Court 13th Criminal Division on the KRWU leadership obstruction of business case, which dismissed the obstruction of business charges against the former KRWU President, Mr Myounghwan Kim and three other central KRWU officers who had led the December 2013 strike. The District relied on a Supreme Court ruling precedent according to which for a strike to constitute obstruction of business it has to have "occurred suddenly at a time when the employer could not predict it". To the extent that the preparations for the December 2013 strike were public, the District Court found that this condition was not fulfilled and hence obstruction of business was not established. The complainants cite excerpts of the ruling in which reference is made to the ILO opinion: "Penalizing a simple act of refusing to provide labour as a crime of obstruction of business has the practical effect of imposing forced labour ... Considering that there is concern that this could go against article 12(1) of the Constitution, which prohibits forced labour, together with the fact that currently our nation is under criticism from the ILO and international society for being the only country that applies criminal penalties to simple acts of refusing to provide labour that lack legitimacy, it is necessary to apply penalties for obstruction of business to simple acts

of refusing to provide labour in a limited and restricted manner”. The complainants add, however, that this ruling is not final; the prosecution has appealed and the verdict can be overturned in the Appeals Court, and that the possibility of application of obstruction of business to peaceful strikes is maintained in the existing legal precedents.

- 83.** The complainants finally indicate that the ruling of the District Court contains aspects at variance with international standards to the extent that it provides a very narrow interpretation of the legitimate purposes of a strike. According to the ruling “the question of the execution of structural adjustment at a company, such as redundancies or the merger of business organizations, are matters that require high-level determinations by the party responsible for management, and thus, in principle, cannot be the subject of collective bargaining; even in the case that the execution of structural adjustment necessarily involves changes in workers’ status or working conditions, the purpose of strike (concerning these issues) cannot be accepted as legitimate ... The question of whether to invest to establish the Suseo KTX stock Company is a matter requiring a high-level determination by the party responsible for management – the Korail – and therefore ... cannot be a subject in collective bargaining. Thus the goal of this strike – to stop such a decision – cannot be accepted as legitimate”. Referring to the precedents at the basis of the District Court’s restrictive interpretation, the complainants indicate that with regard to the legitimacy of the purpose of a strike, the Supreme Court has, in several rulings, made the interpretation that the demands made in a strike must be related to the improvement of working conditions and be the subject of collective bargaining. The complainants allege that, over the last several decades, the Governments and the employers in the country have used this narrow interpretation to treat countless strikes by railway and other workers as illegitimate.
- 84.** The complainants further submitted new information about the process of revision of the collective bargaining agreement between the railway company and the KRWU in the course of the year 2014, driven by the introduction of a government policy called the “Normalization of Public Institutions”. Indicating that as a central part of this policy, the Government instructed the railway company and other public institutions with severe debt to abolish or revise collective bargaining agreement provisions falling under 55 items and eight categories, the complainants allege that the main provisions targeted included those protecting benefits and rights won by the railway company and other public institution workers through years of struggle. The complainants further indicate that as instructed by the Government, the railway company demanded revision of the identified collective agreement provisions during the 2013 bargaining on wages and unresolved issues with the KRWU which carried over into 2014. It is alleged that the company threatened strict enforcement of disciplinary measures, additional claims for damages and additional forced transfers should the KRWU refuse the proposed conditions and said it would minimize disciplinary measures and defer a second round of transfers should the KRWU concede. According to the complainants, faced with this pressure, the KRWU leadership reached a provisional agreement with the company, which included most of the revisions required by the government’s policy on 18 August 2014.
- 85.** The complainants indicate that the provisional agreement was subjected to a vote by the KRWU officers composing its Expanded Industrial Dispute Committee, and it was adopted with 83 in favour, 29 against, and 12 abstaining. It was voted down, however, in a full membership vote carried out from 1 to 3 September with only 49 per cent voting in favour. Given that this full membership vote had the character of a vote of no confidence in union leadership, KRWU President Myounghwan Kim and the other central officers that had led the 2013 strike resigned, creating a temporary leadership vacuum. Immediately after the agreement was voted down, the Government announced ten more areas where workers’ conditions were to be scaled back at the railway company and 37 other public institutions centrally targeted by the Normalisation of Public Institutions policy. Based on the Government’s instructions, the company management called on the KRWU’s interim acting

leadership to engage in additional negotiations. The complainants further allege that while the leadership vacuum lasted, the company engaged in various efforts to create division among the KRWU membership, namely through mobilizing mid-level managers to post flyers at worksites around the country stressing the importance of accepting the demands related to the Normalisation policy and through pressuring the entire workforce to sign a petition and organize a rally to the same effect. Allegedly, these pressures continued until a new KRWU leadership was elected in October 2014 and in the process hundreds of union members disaffiliated from the KRWU.

- 86.** In its communication received on 1 May 2017, the Government reiterates its February 2014 observations with regard to the grounds on which the December 2013 and February 2014 strikes at the Railway Company were judged illegal and reaffirms that under the TULRAA, railway services are considered essential services subject to minimum service requirements. The Government further provides an update with regard to the disciplinary measures taken against the KRWU leadership and members that had participated in the abovementioned strikes, indicating that as of March 2017, 11 trade unionists were dismissed and 229 suspended, whereas 32 faced a pay cut. It further specifies that the 11 dismissed workers filed individual administrative suits between 15 May and 9 June 2015 which are still pending.
- 87.** With regard to the obstruction of business charges against union members, the Government reiterates its January 2015 observations, indicating that there is little chance of peaceful strikes involving no more than a suspension of work being penalized as an obstruction of business even when the strikes lack a legitimate cause and therefore such charges are unlikely to involve a violation of the freedom of association.
- 88.** With regard to the 2014 revision of the collective agreement between the KRWU and the railway company, the Government indicates that the 2014 agreement is the result of an amicable agreement reached after dozens of supplemental bargaining sessions between the company and the KRWU in accordance with relevant laws, including the TULRAA. It further indicates that in the process of implementing the labour–management collective agreement, the management engaged in activities to inform their employees of the content of the collective agreement and concludes that the argument that the company was exploiting the “Normalization of Public Institutions” policy to weaken the KRWU is not true.
- 89.** *The Committee takes due note of the information provided by the complainants and the Government and observes that the issues raised in the allegations relate mainly to measures taken in relation to strike actions organized by the KRWU in the railway company on respectively 9–31 December 2013 and 24 February 2014. These issues include qualification of the strike as illegal with reference to its purpose; hiring of replacement workers during the strike; disciplinary measures including dismissals against striking workers and trade union officials who organized the strike action; charging, arrest and detention of trade union officials who organized the strike under section 341 of the Penal Code (obstruction of business); arrest and charging of protesting trade unionists for obstruction of justice; use of excessive police force; searching of trade union premises entailing damage to property; and civil lawsuits against the trade union and its members for damages caused as a result of the strike and irregularities in the process of revision of the collective bargaining agreement between the KRWU and the railway company. While the Government has not replied to the detailed allegations presented in the communications dated 16 September 2014 and 24 February 2015, it has addressed two aspects of those allegations that were previously raised in the recommendations of the Committee and the complainants’ communication of July 2014. The Committee hence invites the Government to provide detailed information with regard to the further issues raised in the complainants’ more recent communications.*

90. *With regard to the allegation of the qualification of the strike as illegal, the Committee notes the complainants' indication that despite the fact that the trade union followed all necessary procedures for a legal strike, the company released an official statement promising strict response and labelling the strike illegal before it started. The Committee further notes the complainants' indication in their communication dated 24 February 2015 that the Western Seoul District Court 13th Criminal Division held, in its ruling issued on 22 December 2014, that the December 2013 strike was illegitimate, as its goal purported to a matter that cannot be the subject of collective bargaining – namely the execution of structural adjustment in the company. The Committee notes that, according to the complainants, this interpretation of the legitimate goals of a strike is based on numerous precedents set by the Supreme Court that hold that the demands made in a strike must be exclusively related to the improvement of working conditions and be the subject of collective bargaining. The Committee is bound to recall that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests [see **Digest**, op. cit., para. 531]. In its examination of the present case the Committee has already repeatedly, albeit in different contexts, requested the Government to take the necessary measures to ensure that strike action may be carried out beyond the limited question of industrial disputes for the signing of a collective agreement. In the case of the December 2013 strike at the railway company, the demands of the strikers related to a reform and restructuring plan with significant impact on the company, which would have undoubtedly affected the workers' interests. The restrictive interpretation of legitimate purposes of strike action may have serious consequences for the striking workers and their organizations in that it may expose them to civil and penal lawsuits and justify measures such as use of replacement workers to break the strike. In light of the above, the Committee once again requests the Government to take the necessary measures to ensure that the current narrow interpretation of the legitimate goals of strike action is set aside so that strike action can be carried out in relation to all social and economic matters of direct concern to the workers.*
91. *With regard to the hiring of replacement workers during the strike, the Committee notes the complainants' allegation that in the lead-up to the December 2013 strike, the railway company released a press statement labelling the strike illegal and announcing plans to respond strictly including through the hiring of replacement workers' and that during the strike the company actually used over 6,000 replacement workers including retired workers, trainees and members of the military dispatched by the Ministry of Defence. The Committee also notes the complainants' contention that the use of replacement workers was resorted to despite the fact that the trade union took steps in order to comply with requirements of provision of minimum service.*
92. *With regard to the alleged disciplinary measures undertaken against KRWU members and officials in relation to strike action, the Committee notes that, according to the complainants, as soon as the strike began on 9 December 2013, the railway company announced that it would remove all strikers from their positions and did so with regard to over 8,600 KRWU members. Labour Relations Commissions found that these dismissals during strikes were unjust. The complainants then refer to two rounds of disciplinary hearings after the end of the two strike actions, respectively in February and July 2014 that resulted in measures such as dismissals, suspensions and dock in pay against hundreds of workers in relation to their participation in the two strike actions and other protests at the beginning of the year 2014. Pursuant to the Government's latest communication on this matter, as of March 2017, after the finalization of the review process by the Labour Relations Commissions, 11 workers were dismissed, 229 were suspended and 32 were subjected to dock in pay. The 11 workers whose dismissal was confirmed have filed administrative suits that are still pending. Recalling that recourse to dismissal or suspension of trade unionists for having exercised*

the right to strike constitutes serious discrimination in employment on grounds of legitimate trade union activities, and that workers dismissed or suspended in such contexts must be immediately reinstated without loss of pay, the Committee invites the complainant and the Government to submit follow-up information with regard to the outcome of the administrative suits filed by the 11 dismissed workers.

- 93.** *The Committee notes the complainants' indications in their communication dated 16 September 2014 that the railway company pressed charges of obstruction of justice against 176 and 92 KRWU officers respectively in relation to the two strike actions of December 2013 and February 2014 whose trials were under way at the time of the communication. For 35 persons among those charged, arrest warrants were issued; five were arrested during the strike, the rest turned themselves in afterwards. The court did not issue detention warrants for most of them, and the last ones in detention were released on 2 February 2014. In their communication dated 24 February 2015 the complainants indicate that the Western Seoul District Court 13th Criminal Division dismissed the obstruction of business charges against the four central KRWU officials who had led the December 2013 strike on the grounds that the strike had not happened suddenly at a time when the employer could not predict it. The Committee welcomes this ruling and notes with interest that in its reasoning, the District Court has referred the ILO position on section 314 of the Penal Code in support of its restrictive interpretation of that legal provision. The Committee also takes due note of the Government's explanations about the criteria the courts take into consideration when applying section 314 of the Penal Code. It notes with interest the Government's indication that not even an illegal strike would be subject to punishment on charges of obstruction of business, unless the employer's free will to continue business is likely to have been suppressed or confused. The Committee finds, however, that the standard referred to by the Government, namely that "only strikes that take place unexpectedly and are assessed to have possibly suppressed or confused the employer's free will to continue their business because the strike has created considerable confusion or damage to the business are considered a crime of obstruction of business" is very broad and does not exclude the application of obstruction of business to peaceful strikes. More specifically, the Committee recalls that by linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the Committee observes that the courts favour a restrictive approach to the application of obstruction of business to strike actions, it is bound to note that as long as this provision remains applicable to certain peaceful strike actions, workers who exercise their right to strike are exposed to the risk of criminal prosecution, arrest and detention. Even if at the end of a lengthy judicial process they are not condemned as a result of restrictive judicial interpretation of section 314(1), the mere fact of going through the stages of prosecution and trial, and possibly arrest and detention, constitutes in and of itself a serious infringement of their right to freedom of association. In view of the above observations and recalling its previous conclusions in this respect, the Committee once again urges the Government to take the necessary measures to review section 314 of the Penal Code so as to ensure that it does not infringe the right of workers to exercise legitimate trade union activity and to bring it in line with the principles of freedom of association. In particular, the Committee urges the Government to ensure that, in the meantime, charges of obstruction of business are not brought in relation to peaceful strikes, and drop all charges against those workers who have been indicted for participation in such strike actions. It further invites the Government and the complainants to keep it informed of the steps taken and to send information as to the outcome of the pending judicial proceedings against KRWU officials and provide copies of the relevant court judgments.*
- 94.** *The Committee notes the information submitted separately by two groups of complainants as well as the observations of the Government with regard to the events of 22 December 2013. The Government and the complainants concur on the fact that the police entered KCTU headquarters in search of six KRWU leaders against whom arrest warrants were*

issued for participation in the strike action in the railway company; that the police proceeded with this operation without a search warrant, and that 138 protestors including KCTU members, were arrested, among whom 19 were later indicted for obstruction of justice, 68 were summarily indicted and 50 had their prosecution suspended. The Committee notes that the complainants allege that the police used excessive force against protestors and destroyed and inflicted damage on facilities, furniture and documents while searching the KCTU offices. The Committee recalls that searches of trade union premises should be made only following the issue of a warrant by the ordinary judicial authority where that authority is satisfied that there are reasonable grounds for supposing that evidence exists on the premises that is material to a prosecution for a penal offence and on the condition that the search be restricted to the purpose in respect of which the warrant was issued [see *Digest*, op. cit., para. 185]. The Committee notes with deep concern the allegations of ransacking and damage to trade union property in the course of this operation. Recalling that arrest, detention and bringing of charges against trade unionists for trade union activities is contrary to the principles of freedom of association, the Committee observes with regret that the KCTU members who were protesting against the entry and search of union premises without a warrant have been arrested and indicted for obstruction of justice, on the grounds that they obstructed the implementation of arrest warrants by the police. The Committee understands that the arrest warrants on the basis of which the police proceeded with this operation were issued against the KRWU strikers for obstruction of business, hence it is bound to recall its long-standing request to amend this provision so as to ensure respect for freedom of association rights. On the basis of these observations, the Committee requests the Government to order a thorough investigation of the claims of excessive use of force and damage to property by the police, and to take the necessary steps to hold those responsible for the violation of the premises of KCTU to account and to keep it informed of the measures taken. The Committee further requests the Government and the complainants to provide information on the outcome of judicial proceedings against KCTU leaders and members indicted in relation to these events and to send copies of the rulings.

95. The Committee notes the complainants' indications as to the civil lawsuits that the railway company has brought against the KRWU and its members in relation to the strike actions of December 2009 and 2013, and the related measures of guarantee involving freezing of the union's bank account up to KRW10.5 billion and the provisional seizure of its assets. In particular, the Committee notes with concern the complainants' indication that these financial suits combined with the fines prescribed for under the obstruction of business provision not only pose a severe financial threat to the very existence of the union, they also have an intimidating effect and inhibit legitimate trade union activities. The Committee has already emphasized that strikes are by nature disruptive and costly, and strike action also calls for a significant sacrifice for the workers who choose to exercise it as a tool of last resort and means of pressure on the employer to redress any perceived injustices [see 365th Report, para. 577]. In this case, as no detailed information has been provided as to the grounds for the damage claims and the Government has not replied to the allegations, the Committee, expressing its concern as to the important impact such hefty damage claims can have on the free functioning of the union, requests the Government to reply to the allegations and asks it and the complainant to provide follow-up information on the judicial proceedings, including copies of the rulings issued. The Committee further requests the Government to seek the views of the employers' organizations on this matter.
96. With regard to the revision of the collective bargaining agreement between the railway company and the KRWU, the Committee notes with concern the allegation of the complainants that the company threatened strict enforcement of disciplinary measures, additional claims for damages and additional forced transfers should the KRWU refuse the proposed conditions, as well as the allegation that the railway company engaged into efforts to create division among the KRWU members. The Committee notes that while the Government, in its communication that predates the complainants' communication, has

*mentioned that in December 2014, the railway company entered into a valid collective agreement, the complainants do not mention the conclusion of this agreement. Recalling that collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining [see **Digest**, op. cit., para. 926], the Committee is bound to note that threats of measures of compulsion such as those alleged by the complainants, if established, may alter the voluntary nature of bargaining. The Committee invites the Government to provide full information in relation to these allegations. The Committee also invites the complainants to provide additional information on the conduct and outcome of the revision process.*

Case No. 2684 (Ecuador)

97. The Committee recalls that the allegations still pending in this case concern the return of trade union dues to workers affiliated with the National Federation of Workers of the State Petroleum Enterprise of Ecuador (FETRAPEC), the adoption of legislation contrary to trade union independence and the right to collective bargaining, and the dismissal of trade unionists. The Committee last considered this case at its June 2014 session [see Report No. 372, paras 264–285] and, on that occasion, made the following recommendations:

- (a) The Committee requests the Government to keep it informed of any developments regarding the return of the union dues to the members of FETRAPEC.
- (b) The Committee requests the Government to take the necessary measures, in full consultation with the social partners, to amend the legislation as specified in its conclusions so as to guarantee specific protection against anti-union discrimination including anti-union dismissals and to establish sufficiently dissuasive sanctions against such acts. In addition, the Committee once again requests the Government to promote without delay the commencement of discussions between FETRAPEC and the company with a view to the reinstatement of the trade union leaders Edgar de la Cueva, Ramiro Guerrero, John Plaza Garay and Diego Cano Molestina. The Committee requests the Government to keep it informed on these matters.
- (c) As regards the alleged mass anti-union dismissals that took place in the E.P. PETROECUADOR enterprise in 2009 and 2010, the Committee deeply deplores the fact that, despite the time that has elapsed, the Government has not sent the requested information, particularly on the alleged anti-union nature of the mass dismissals, having limited itself to emphasizing the fact that the dismissed workers and trade union members were compensated, and therefore urges it to take the necessary measures to ensure that an independent investigation is conducted into the allegation and to keep it informed of the outcome.
- (d) The Committee requests the Government to keep it informed of the outcome of the ongoing criminal proceedings against the workers who participated in a work stoppage in the Unit for the Generation, Distribution and Commercialization of Electrical Energy of Guayaquil (Unidad Eléctrica de Guayaquil) enterprise.
- (e) The Committee urges the Government to annul Ministerial Orders Nos 00080 and 00155A and their effects, since they seriously violate the principle of free and voluntary collective bargaining enshrined in Convention No. 98. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.
- (f) The Committee requests the Government to ensure the consultation of the workers' and employers' organizations on the regulations and procedures of the Ministry of Labour.
- (g) The Committee urges the Government to continue to promote dialogue with the representative trade union organizations, particularly as regards meetings with the union representatives and the work of the CNT, and to keep it informed of any developments in that regard.

98. The Committee takes note of the additional information sent by FETRAPEC in a communication dated 28 May 2015 and of the union's allegation that the Government lacks the political will to give effect to the Committee's recommendations and that, specifically: (i) despite the statements made by the Government, neither FETRAPEC nor any of its four enterprise committees (the Single Enterprise Committee of Workers of Petroecuador (CETAPE), the National Enterprise Committee of Petroproducción Workers (CENAPRO), the National Enterprise Committee of Petroindustrial Workers (CETRAPIN) and the National Enterprise Committee of Petrocomercial Workers (CENAPECO) has ceased to exist or lost legal personality; (ii) despite Government attacks, the unions and the Federation have neither embarked on a dissolution procedure nor been the subject of a court ruling to that effect; (iii) the enterprise committee mentioned by the Government (the Works Council of the Public Hydrocarbon Enterprise PETROECUADOR (CETRAPEP)) is now part of FETRAPEC and its General Secretary, Mr John Reyes, is the current president of FETRAPEC; this demonstrates that the Federation is still representative; and (iv) despite the Committee's repeated recommendations, the Government has not taken any steps with a view to reinstatement of the four FETRAPEC officials, Mr Edgar de la Cueva, Mr Ramiro Guerrero, Mr John Plaza Garay and Mr Diego Cano Molestina.
99. The Committee deeply regrets that since its last consideration of the case in June 2014, it has received no observations from the Government concerning the various actions requested in relation to the pending allegations in this case, despite the importance of the issues raised therein. The Committee also regrets to note that the Government seems to have taken no action to implement the Committee's recommendations. Recalling that the legal aspects of this case are under review by the Committee of Experts on the Application of Conventions and Recommendations, the Committee again urges the Government to: (i) keep it informed of any developments regarding the return of union dues to the members of FETRAPEC; (ii) promote without delay the commencement of discussions between FETRAPEC and the company with a view to reinstating the dismissed trade union leaders Mr Edgar de la Cueva, Mr Ramiro Guerrero, Mr John Plaza Garay and Mr Diego Cano Molestina; (iii) take the necessary measures to ensure that an independent investigation is conducted into the alleged mass anti-union dismissals that took place at the E.P. PETROECUADOR enterprise in 2009 and 2010; (iv) inform it of the outcome of the criminal proceedings against the workers who participated in a work stoppage at the Unit for the Generation, Distribution and Commercialization of Electrical Energy of Guayaquil (Unidad Eléctrica de Guayaquil); and (v) continue promoting dialogue with the representative trade union organizations. The Committee requests the Government to keep it informed of these matters and invites it to be more cooperative in the future.

Case No. 2780 (Ireland)

100. The Committee last examined this case, in which the complainants alleged acts of anti-union discrimination and the refusal to engage in good faith collective bargaining on the part of the enterprise Ryanair [a low-cost airline], as well as inadequate provisions in legislation to protect against such acts of anti-union discrimination and to promote collective bargaining, at its March 2012 meeting [see 363rd Report, paras 723–815]. On that occasion, the Committee made the following recommendations:
- (a) Considering that the alleged offer of conditional benefits by the company provided that it would not be required to enter into a collective bargaining relationship with the union, if true, would be tantamount to employer interference in the right of workers to form and join the organization of their own choosing to represent their occupational interests, and as the information available is insufficient to determine whether such an act occurred, and, if it occurred, whether it would have been considered to be contrary to Irish law if proven, the Committee requested the Government to ensure that the protection available against anti-union discrimination would adequately cover such acts, including through a thorough review of the protective measures with the social partners concerned.

- (b) In view of the seriousness of the allegations as regards the extent of interference on the part of the employer, the Committee requested the Government to carry out an independent inquiry without delay into the alleged acts of employer interference in order to establish the facts in this specific case, and, if necessary, to take the necessary measures to ensure full respect of the principles of freedom of association. It requested the Government to keep it informed of the outcome of such an inquiry.
- (c) In light of the above, and noting with interest the Government's statement, contained in its communication from 11 July 2011, that the administration is committed in its Programme for Government to reform the current law on employees' right to engage in collective bargaining (the Industrial Relations (Amendment) Act 2011) so as to ensure compliance by the State with recent judgments of the European Court of Human Rights, as well as the Government's subsequent indication that its reply should not be taken as an indication that the Government will not be proposing any changes in the framework of the ongoing review of the procedures under the Industrial Relations (Amendment) Act 2001, particularly in the light of the Ryanair case, the Committee invites the Government, in full consultation with the social partners concerned, to review the existing framework and consider any appropriate measures, including legislative measures, so as to ensure respect for the freedom of association and collective bargaining principles set out in its conclusions, including through the review of the mechanisms available with a view to promoting machinery for voluntary negotiation between employers' and workers' organizations for the determination of terms and conditions of employment.

101. The Government provided initial observations in a communication dated 14 September 2012 and transmitted the views of the Irish Business and Employers Confederation, which raised concerns about the recommendation to review the Irish legislation solely in the context of an individual complaint, in a communication dated 19 September 2012. In respect of recommendation (a), the Government expresses its commitment to reform the current law on an employee's right to engage in collective bargaining and indicates that it is engaged in an ongoing review of the operation of the Industrial Relations (Amendment) Act 2001, which it expects will also address recommendation (c). As regards recommendation (b), the Government indicates that it is not able to reopen a dispute that has been determined by the Irish courts, while adding that the parties may resume the hearing before the Labour Court. In a communication dated 11 March 2015, the Government describes the subsequent introduction of draft legislation to amend the Industrial Relations (Amendment) Act 2001, with a view to fulfilling its commitment in the Programme for Government to reform the current law on employees' right to engage in collective bargaining so as to ensure compliance with recent judgments of the European Court of Human Rights (ECHR). The Government indicates that worker and employer stakeholders played a critical role in the development of this legislation, which would provide an improved framework for workers who seek to improve their terms and conditions in situations where there are no arrangements with their employer to do this through collective bargaining. The Government indicates that it was keen to respect the positions articulated by stakeholders to develop proposals that sustain Ireland's voluntary system, but also ensure that workers have confidence that, where there is no collective bargaining, they have an effective system that ensures they can air grievances about remuneration and terms and conditions and have these determined based on those in similar companies and not be victimized for doing so.

102. *In this respect, the Committee notes with interest the information provided by the Government, within the framework of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in relation to the new Industrial Relations Act 2015, which strengthens the statutory code on victimization to explicitly prohibit inducements to forgo trade union representation. The Act further provides for the reinstatement of collective bargaining registered employment agreements at the enterprise level and for new sectoral employment orders. The Committee further notes with interest the information provided concerning the adoption of the Workplace Relations Act in 2015, which streamlined five workplace relations bodies into two, greatly simplifying the system and facilitating access*

for those seeking to vindicate their rights. The Committee welcomes this information and considers that this case requires no further examination.

Case No. 2953 (Italy)

103. The Committee recalls that, in the context of the denunciation by the FIAT Group (hereinafter the automotive group) of the collective agreements by which it was bound and the conclusion of new agreements which the Federazione-Impiegati Operaio Metallurgici–the Italian General Confederation of Labour (FIOM–CGIL) has left unsigned, this case concerns, firstly, the latter organization’s exclusion from entitlement to a number of trade union rights – in particular that of having enterprise-level representatives – which are reserved for organizations that sign the agreements in force at the company, and also alleged acts of anti-union discrimination against the FIOM–CGIL and its members at the company in question. The Committee considered this case at its meeting in March 2014 [see 371st Report, paras 580–626]. On that occasion it made the following recommendations:

- (a) The Committee requests the Government to act quickly in the matter and to keep it informed of the initiatives taken by the Government, in consultation with the social partners, to draw any legislative consequences from the Constitutional Court’s decision of 3 July 2013 concerning the definition of criteria for assigning the strengthened trade union rights recognized by article 19 of the Workers’ Statute, in line with the ILO’s Conventions and principles concerning freedom of association.
- (b) Observing that the deduction of trade union dues of affiliated workers in favour of the various representative trade unions was discontinued with regard to the FIOM–CGIL after its refusal to sign the collective agreement, the Committee, in view of the merits of the case and taking into account the court decisions already rendered ordering the resumption of such deductions in several enterprises of the Group, requests the Government to bring together the parties concerned, in order to ensure that all the employees of the Group affiliated to the FIOM–CGIL may continue to have their union dues deducted from their salaries and paid to the said trade union organization.
- (c) The Committee requests the Government to indicate whether the three trade union delegates of the FIOM–CGIL from the enterprise of Melfi, which were the subject of the ruling of the Court of Cassation of 2 August 2013, have actually been reinstated.
- (d) Concerning the other allegations of anti-union behaviour and discrimination contained in this case, the Committee requests to be kept informed of the outstanding judicial decisions. It also requests the Government to take the necessary initiatives, such as facilitating dialogue between the Group and the complainant organization, to help prevent any new conflicts of a similar nature from arising within the Group under consideration. The Committee requests the Government to keep it informed of this matter.

104. The Committee notes that both the complainant organization (communication of 16 July 2014) and the Government (communications of 24 July and 17 August 2014) have sent information relating to the Committee’s various recommendations. The Committee also notes that the Government’s communications of 2014 contain the observations of the automotive group as well as those of Italy’s other two main trade union organizations (the Italian Confederation of Workers’ Trade Unions (CISL) and the Italian Labour Union (UIL)) concerning the matters covered by the complaint. The Committee notes that the observations of the CISL and the UIL: (i) also contain information intended better to describe the recent changes to the national and sectoral system of collective bargaining which provide the background for this case; and (ii) emphasize that the various aspects of the complaint submitted by the CGIL have been fully resolved through the use of internal protection mechanisms without the need to resort to government intervention, which would have constituted interference contrary to the principles of freedom of association and trade union autonomy that the Committee has a duty to protect.

- 105.** Concerning the definition of criteria for assigning the strengthened trade union rights recognized by article 19 of the Workers' Statute, in particular the rules governing representation of the different trade union organizations within the enterprise, the Committee notes with interest that, in the light of the inter-confederation agreement of 28 June 2011, the protocol of understanding of 13 May 2013 and the Constitutional Court's decision of 3 July 2013, on 10 January 2014 the CIGL, CISL and UIL, together with the employers' organization CONFINDUSTRIA, signed a single text on union representation (*Testo Unico sulla rappresentanza*) which provides that any trade union whose level of representativeness is at least five per cent may participate in collective bargaining and may establish union representation within the enterprise. Concerning the deduction of union dues for workers affiliated to the FIOM–CGIL, the Committee notes with satisfaction the Government's statement that the automotive group has been making such deductions since September 2012 and that this matter is therefore resolved.
- 106.** Concerning the reinstatement of the three FOIM–CGIL trade union delegates from the Melfi plant, the Committee, while noting the Government's comments on the contentious nature of the issue, notes with satisfaction that the three workers were reinstated on 24 September 2013, pursuant to the corresponding ruling of the Court of Cassation. Concerning the other allegations of anti-union conduct and discrimination, the Committee notes firstly that both the Government and the complainant organization state that the automotive group has implemented the court decisions concerning re-employment of 19 workers affiliated to the FIOM–CGIL who had not been included in a recovery process after a period of temporary lay-offs. The Committee also notes with satisfaction the agreement signed in June 2014 by the automotive group and the complainant organization to finalize the re-employment of the 19 workers and bring an end to all debate in that regard. The Committee notes finally the information provided by the automotive group concerning the judgment of 7 May 2014 by the Court of Appeal in Turin in relation to the process of forming a European enterprise committee at the Group. *In view of the different pieces of information provided which it has noted with satisfaction, the Committee will not continue with the examination of the present case.*

Case No. 3030 (Mali)

- 107.** At its March 2015 session, the Committee considered the present case submitted by the Trade Union Confederation of Workers of Mali (CSTM) concerning mass dismissals of workers, union representatives and staff members as a result of strike action in the mining sector. [see 374th Report, paras 505–543.] On that occasion the Committee made the following recommendations:
- (a) Recalling that more than 18 months have elapsed since the ruling was handed down by the arbitration council on the dismissals which occurred in the companies LTA–MALI SA and SEMOS SA, the Committee expects that appropriate measures have been taken by the public authorities to implement the ruling and requests the Government to report back on this without delay. In addition, the Committee requests the Government to keep it informed without delay of the decisions handed down following the appeals lodged, on all sides, with the Kayes Labour Tribunal;
 - (b) The Committee expects the Government to keep it informed without delay of the outcome of the different legal proceedings brought concerning the dismissals of 434 workers by the company BCM SA, in particular of the decision of the Supreme Court, and the follow-up thereto.
 - (c) The Committee observes that the complainant organization refers to the dismissal of two trade unionists by the company ALS–MALI SA. Noting the Government's response concerning the procedure followed for one union leader, the Committee invites the complainant organization to approach the authorities in order to provide the information on the second trade unionist affected by a dismissal measure in the company so as to allow

the labour administration to make the necessary inquiries. The Committee requests the Government to keep it informed in this respect.

- 108.** The Government conveyed information on the follow-up to these recommendations in communications dated 15 December 2015 and 2 December 2016. Concerning recommendation (a), the Government states that a transcript of negotiations on a list of grievances was signed by the CSTM and the Government on 13 March 2015. The recommendations contained in the grievance list concerned in particular the reinstatement of the 27 trade unionists and 30 activists dismissed by the company and payment of their salary arrears. The arbitration council examining the case exonerated the company and did not consider reinstatement of the dismissed workers. The arbitration council's decision, however, was opposed by the company and the Government states that it has undertaken to bring the dispute to the Council of Ministers – in accordance with section L.229 of the Labour Code – within three months of the signing of the transcript. Regarding the legal remedies relating to this matter, the Government states that the Kayes Labour Tribunal, in a judgment of 24 June 2013, found the legal action taken against the company by 13 trade unionists (out of 27 dismissed) to be frivolous. The Government states further that the transcript of March 2015 also concerned lifting the suspensions and dismissals of 11 trade unionists from the company SEMOS SA. According to the Government, a Memorandum of Understanding signed at the conclusion of a conciliation committee was approved by the courts. The 11 trade unionists were finally reinstated in their posts and their salary arrears paid. *The Committee, noting the gratifying outcome of this case, requests the Government to keep it informed of any follow-up to the case referred to the Council of Ministers concerning the dismissal of 27 trade unionists and 30 activists for having participated in strikes.*
- 109.** The Committee notes, in respect of recommendation (b), Judgment No. 130 of 6 June 2013 in which the Supreme Court, on application by the company, quashed Decision No. 0110/MTEFP-DNT of 30 August 2012 of the national labour inspector, which itself overturned the decision of the Kayes regional labour inspector authorizing the dismissal of 434 workers. The Committee also observes that the Kayes Labour Tribunal, on application by 279 dismissed workers, ruled in June 2013 that the dismissals were illegal and sentenced the company to pay salary arrears with damages (copy of ruling provided). The Committee notes, however, that the Kayes Court of Appeal, on application by the company, by a ruling of 12 December 2013 overturned the judgment of first instance (copy of judgment provided). *The Committee requests the Government to keep it informed of any follow-up to the case involving the dismissal of 434 workers, in particular any appeal lodged against the ruling of the Kayes Court of Appeal and the follow-up thereto.*
- 110.** With regard to recommendation (c), the Committee observes that the complainant organization has communicated to the authorities the identity of the second trade unionist affected by a dismissal measure in the company. The Committee also notes the Government's statement that the case is under consideration by the courts. *The Committee requests the Government to keep it informed of any court decision concerning this matter and any follow-up thereto.*
- 111.** *In conclusion, while noting the efforts of the authorities to help resolve these disputes, the Committee is concerned at the time that has elapsed since the dismissal measures taken in 2012 without any lasting solution being found. The Committee is of the view that this situation, which affects a large number of trade unionists and union leaders, is likely to impair the capacity of the trade union organizations concerned to expand their activities. The Committee urgently requests the Government to try everything possible to find a lasting solution to the unresolved cases.*

Case No. 2679 (Mexico)

- 112.** The Committee last examined this case at its March 2015 meeting. It concerns alleged anti-union dismissals of insurance sales agents who are members of the Union of General Insurance Sales Agents in the State of Jalisco (SAVSGEJ) and the cancellation of the union's registration [see 374th Report, paras 59–63]. On that occasion, the Committee requested the Government to inform it of the outcome of the judicial proceedings concerning the alleged anti-union dismissals of Ms Rossana Aguirre Díaz, Mr Martín Ramírez Olmedo, Ms María Cristina Vergara Parra and Ms María del Socorro Guadalupe Acevez González.
- 113.** In communications dated 1 October 2015 (supported by the National Union of Workers) and 14 November 2016, the SAVSGEJ states that these proceedings remain pending, alleges that it has exhausted all existing instances and underscores the harm caused by the delay in judgment. The complainant union also sends the communications relating to this case that it has addressed to various national authorities including the Supreme Court of Justice of Mexico, together with information on the submission of supporting evidence in the context of Case No. 1254/2008 involving the dismissal of Ms Acevez González (who again states that since the dismissal she has been affected by the non-renewal of the policies she was managing).
- 114.** In communications dated 3 May and 18 November 2016, and 24 February 2017, the Government states that, in compliance with the ruling of 4 June 2012 concerning Case No. 1222/2008 (dismissal of Ms Rossana Aguirre Díaz), the insurance company concerned awarded compensation amounting to 3.9 million Mexican pesos (equivalent to approximately US\$210,000) to Ms Aguirre Díaz, who duly received the compensation and withdrew all claims. As a result, the case was closed as it was fully resolved.
- 115.** With respect to the other three ongoing proceedings, the Government states that they have not been concluded owing to the submission of multiple applications for *amparo* by the parties concerned. The Government provides the following details of the proceedings: (i) concerning Ms María Cristina Vergara Parra (Case No. 1097/2008), the procedure has pending an agreement on the execution of *amparo* and the issuance of a draft resolution in the form of a ruling (*amparo* No. 905/2015 filed with the First Collegiate Tribunal on Labour Matters of the Third Circuit); (ii) concerning Ms María del Socorro Guadalupe Acevez González (Case No. 1254/2008) the supporting evidence submitted by the plaintiff has been discarded, on the grounds that those facts have already been made known to the Local Board in 2012; and (iii) concerning Mr Martín Ramírez Olmedo (Case No. 83/2009) the complainant's appeal for review has not been granted regarding the dismissal of his application for direct *amparo* No. 366/2015 (in which the First Collegiate Court on Labour Matters of the Third Circuit acquitted the defendant enterprise).
- 116.** The Government states that the complainant's communications contribute nothing new to the case, and observes that the delay in concluding matters is not attributable to the labour authority, because all parties to the dispute have exercised their right to use every available recourse in the Mexican legal system to defend their interests. In particular, concerning Case No. 1254/2008, the Government states that the lack of a decision can be ascribed to the plaintiff, who has prevented any conclusion by lodging various appeals based on information already submitted to, and examined by the various competent bodies, which has held up proceedings.
- 117.** *While noting the information provided by the Government, the Committee again notes with concern that three of the cases (those concerning Mr Martín Ramírez Olmedo, Ms María Cristina Vergara Parra, and Ms María del Socorro Guadalupe Acevez González) remain pending despite the time that has elapsed. The Committee firmly expects that these cases will*

be concluded without delay and requests the Government to inform it of the outcome of these proceedings as soon as they have been concluded.

Case No. 2694 (Mexico)

- 118.** The Committee last examined the substance of this case at its October 2014 meeting [see 373rd Report of the Committee, para. 48]. The Committee noted with interest that the Government had held meetings with national and international trade union organizations, in which various issues on the labour agenda had been addressed, including the recommendations made by the Committee in relation to this case in its last report, and that a technical assistance agreement with the ILO was being developed with a view to undertaking a technical review of the new legislation. The Committee requested the Government to keep it informed in this regard.
- 119.** In a communication dated 3 June 2016, IndustriALL Global Union (hereinafter IndustriALL, previously the International Metalworkers' Federation), one of the complainants, submitted additional information in which it alleges that: (i) consultation and social dialogue meetings were not held with all the complainants – the Government merely held bilateral meetings with some of the parties – and the matter of protection agreements and possible solutions to the problem were only discussed superficially; these were primarily meetings held between the Government and the National Union of Workers (UNT), which sought to resolve specific problems and not the underlying problem of protection agreements; (ii) the complainants were not informed about ILO technical assistance to review and adjust the labour law reform; (iii) the use of arbitrary and physical violence against workers fighting to exercise their rights to freedom of association continues; and (iv) in practice no concrete measures have been forthcoming to eliminate the widespread system of protection agreements, and new employer protection agreements are still being signed in all sectors.
- 120.** In the same communication, IndustriALL provides information on specific cases involving the use of protection agreements:
- (a) Honda Mexico United Workers' Union (STUHM). IndustriALL recalls that an initial protection agreement was signed between the company and the Union of Workers in the Vehicle Manufacturing and Assembly Industry (SETEAMI) before the start-up of operations; that, prior to this situation, workers formed a union in the El Salto, Jalisco, plant, establishing the STUHM in May 2010; and that, despite delays in proceedings, calls to cancel the union's registration and threats by the protection union, the STUHM proceeded with its legal action to seek title to the collective agreement. IndustriALL alleges that: (i) on 15 October 2015, the Federal Conciliation and Arbitration Board (*Junta Federal de Conciliación y Arbitraje*) ordered a vote recount in the company, but that this exercise had been plagued by irregularities – the voter list contained irregularities, admittance to the premises was denied to the team of national and international observers, union representatives and workers were threatened, voters were isolated from the rest of the plant and surrounded by security staff; (ii) although the STUHM reported these facts to the Federal Conciliation and Arbitration Board, the latter twice issued decisions disregarding the irregularities; and (iii) a conflict of interest arose in that the same person acted both as the SETEAMI representative and as coordinator for the advisers to the President of the Federal Conciliation and Arbitration Board during the legal action to seek title to the collective agreement.
 - (b) Commercial, Office, Retail, Similar and Allied Workers' Union (STRACC). IndustriALL alleges that: (i) petrol station workers in Mexico City subject to protection agreements receive no wages, are not covered by social security or entitled to benefits, and are required to pay fees to their employers to be allowed to work in the petrol stations in exchange for tips received from customers; (ii) in workplaces where the

STRACC has gained title to the collective agreement, the situation has changed. However, in two of the petrol stations where the STRACC is titleholder of the collective agreement, the workers have been subjected to threats by company representatives and members of the protection union; (iii) several workers from different petrol stations have approached the STRACC to seek protection. The companies are reportedly obliging workers to resign from the union, hiring new staff who are unpaid and receive no social benefits, and signing them up to the protection union through third-party companies; (iv) STRACC union officials, representatives and members have been threatened, beaten, kidnapped and illegally detained on false accusations by the employers in collusion with the local and Federal Government; and (v) they point out that in the legal action to seek title to the collective agreement initiated on 3 June 2014 by the STRACC against the Union of Employers and Workers in the Federal District General Trade Sector and the company *Super Servicio Coapa*, the vote recount did not take place until 31 August 2015, due to a series of irregularities, and that the process has not yet been completed, with the STRACC consequently fearing that once the legal action is concluded the petrol station will be left with no unionized workers.

- (c) National Union of Petroleum Technicians and Professionals (UNTyPP). IndustriALL alleges that: (i) *Petróleos Mexicanos* (hereinafter the oil company) signed a protection agreement with the Petroleum Workers Union of Mexico (STPRM); (ii) the abuses and illegal acts in which the Government has been involved, to the detriment of the oil company workers and workers hired by third-party companies, have been denounced on numerous occasions; (iii) a recent example is the accident that occurred on 20 April 2016 at the Pajaritos plant, in Veracruz state, which was formerly owned by the oil company and is currently owned by another company. More than 30 workers died in the accident and others were injured because of the lack of safety measures, training and equipment and the absence of a trade union organization to monitor compliance with the law in that area – the UNTyPP noted that in this particular case the employer company could not be identified due to the triangulation of labour relations; and (iv) similar cases are reportedly arising throughout the oil and electricity sectors, where protection unions are said to be removing social and financial protections.

121. IndustriALL further alleges that the Government has encouraged protection agreements and that this is evidenced by the signing and deposit of new protection agreements in car manufacturing companies before hiring workers or constructing the plant. In this regard, IndustriALL alleges that: (i) in July 2014, BMW (hereinafter the first car manufacturer) announced the creation of its new plant in San Luis Potosí, which will begin operations in 2019. Also in July 2014 (when the new plant was still at the project stage), a protection agreement signed by the Mexican National Automotive Industry, Similar and Allied Workers' Union was deposited with the office of the Ministry of Labour and Social Security – IndustriALL emphasizes that the Secretary-General of the union in question had reportedly concluded 26 similar collective agreements and claimed to be negotiating an agreement to cover the workers of the Goodyear tyre factory, whose construction had scarcely begun; and (ii) in August 2014, the KIA motor company (hereinafter the second car manufacturer) announced the construction of a car production plant in Nuevo León. Again in August, the protection agreement that reportedly applies in the plant, signed by the Mexican National Automotive Industry, Similar and Allied Workers' Union, was deposited. Moreover, IndustriALL alleges that statements made by the Government in international forums to the effect that strikes have not taken place in Mexico for over two years are false and are indicative of attempts to eliminate independent unions.

122. In communications dated 15 November 2016 and 9 February 2017, the Government provided information as part of the follow-up to the Committee's recommendations. The Government states that: (i) in preparation for the technical assistance agreement with the

ILO, on 21 October 2015, the Ministry of Labour and Social Security requested in writing the opinions of the main workers' and employers' organizations, although only the Revolutionary Confederation of Workers and Peasants (CROC) sent its observations; (ii) the Minister of Labour and Social Security met with the Secretary-General of the International Trade Union Confederation (ITUC) twice – on one occasion the latter was accompanied by the Assistant Secretary-General of IndustriALL Global Union and the Secretary-General of the Trade Union Confederation of Workers of the Americas (CSA). During these meetings, discussions took place on the importance of mediation and conciliation, the requirement for conciliation and arbitration boards to make collective agreements public, the employer's obligation to disseminate collective agreements in their entirety, the removal of the "exclusion clause" and the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Government further states that: (i) in February 2013, the National Conference of Labour Ministers (CONASETRA) was created and, at their meeting in February 2016, those responsible for labour policy in the states and in the federation committed themselves to promoting a national agenda on labour justice, with a view to increasing the use of technologies to facilitate the transparency of processes, promoting reforms on procedural fraud, reviewing working conditions and staff training at national level, discussing the construction of a national IT platform and strengthening tripartism; (ii) in 2016, during the National Conference of Conciliation and Arbitration Boards (CONAJUNTAS), a permanent forum where labour courts explore, define and adopt agreements, the conciliation and arbitration boards committed themselves to joining the process to discuss, analyse and define actions for the thorough review of the labour justice system; (iii) the Federal Conciliation and Arbitration Board and the Local Conciliation and Arbitration Boards have signed coordination agreements facilitating their joint communication; (iv) the Federal Government has emphasized the importance of dialogue, conciliation and understanding, which has resulted in more than 29 consecutive months without strikes in the federal jurisdiction; (v) the reform of the Federal Labour Act led to the repeal of the second paragraph of section 395 of the Act, removing the "exclusion clause"; and (vi) with respect to the lack of impartiality of the conciliation and arbitration boards and the excessive length of proceedings, the Government indicates that the inclusion of section 391bis in the Act guarantees workers the right to information and transparency, since this provision obliges the authority to make information on collective agreements public. This would be complemented by section 78 of the General Act on transparency and access to public information, which requires administrative and judicial labour authorities to publish and update information on trade union registration and collective agreements.

123. The Government also reported that, on 28 April 2016, the President of the Republic submitted a legislative proposal to the Senate to amend and add articles 107 and 123 of the Constitution. This proposal was unanimously approved on 13 October 2016 by the full Senate and on 4 November by the Chamber of Deputies. The initiative will transfer the administration of labour justice to the judiciary, handing over responsibility for the settlement of labour disputes to the labour courts. This reform will establish a decentralized federal conciliation body with administrative and budgetary autonomy, a legal personality, its own resources, and full technical, operational, budgetary, decision-making and administrative independence. It will also guarantee workers personal, free and secret ballots in the election of their union leaders, the settlement of disputes between unions and the right to request the conclusion of a collective agreement.

124. Furthermore, the Government sent its observations on the additional information submitted by IndustriALL. In this connection, the Government states that: (i) the vast majority of issues raised by IndustriALL were also submitted to the Committee of Experts on the Application of Conventions and Recommendations (CEACR), through the regular supervisory mechanism established by articles 22 and 23 of the ILO Constitution, and discussed by the Conference Committee on the Application of Standards (CAS) in 2015 and 2016; (ii) it does not consider it appropriate or efficient that the issues raised by IndustriALL between 2009

and 2010 have also been submitted to the CEACR, resulting in double scrutiny, a lack of adequate follow-up and the Government having to submit information on the same matters three times; and (iii) the Government requests the Committee to conclude case No. 2694 and to continue to follow up on the issues raised by the complainant with regard to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Government adds that, in relation to legislative measures to strengthen protection against anti-union practices, the Government notes that progress in these matters was reported to the CEACR in May 2016.

125. As for the information provided by IndustriALL on specific cases, the Government maintains that:

- (a) With regard to the STUHM, the information provided contains no fresh allegations. This case was transmitted to the CEACR in August and September 2015 under article 23 of the ILO Constitution by the National Trade Union of Workers in the Iron and Steel Industry, Derivatives, Similar and Related Products of the Mexican Republic (SNTIHA) and the ITUC respectively. The Government has already responded to these allegations through communications sent to the CEACR.
- (b) Concerning the STRACC, although the case was included in an IndustriALL study for the CEACR in September 2016 with regard to article 23 of the Constitution, the CEACR has been considering it since 2014, when it was submitted by the ITUC. The Government has also provided information in the report on Convention No. 87.
- (c) Regarding the UNTyPP, IndustriALL and the SNTHIA raised this matter with the CEACR and the Government submitted its comments to that committee in July 2016.

126. With respect to the cases that were identified by the complainants as new protection agreements, the Government states that they were submitted to other supervisory bodies. In this regard, it indicates that: (i) concerning the first car manufacturer, the matter was referred to the CEACR in August 2015 with regard to the application of Convention No. 87, having been submitted by IndustriALL and the SNTIHA, and the Government's comments to the observations of these trade union organizations were submitted to the CEACR in May and July 2016; and (ii) the situation of the second car manufacturer was also raised with the CEACR by IndustriALL in September 2016 with regard to the application of Convention No. 87, and the Government will address these arguments with the CEACR.

127. With regard to the allegations concerning strikes, the Government states: (i) with regard to the Workers' Union of the Mexican Institute of Water Technology, that the matter has been under consideration by the CEACR since August 2015; and (ii) in connection with the complaints presented by the Workers Union of the Institute of Higher Intermediate Education in the Federal District (SUTIEMS), the Michoacana University Professors Union (SPUM), the Union of Workers and Employees of the Autonomous University of Querétaro (STEUAQ), the Miners' Union of Arcelor Mittal in Michoacán, the Union of the Food and Development Research Centre (SIATCIAD), and the Independent Workers' Union of Nissan Mexico in Cuernavaca, that the follow-up will be reported to the CEACR.

128. *The Committee recalls that the complaint, presented in 2009, questions the industrial relations system in the country as a consequence of an alleged widespread use of employer protection collective agreements. The Committee notes that the Government points out that the issues raised by the complainants are being considered by other supervisory bodies – the CEACR and the CAS – and requests that the Committee refrain from proceeding with the follow-up of the case and that all outstanding issues be dealt with in the examination of the application of Convention No. 87 by the CEACR. The Committee notes that the various allegations concern, on the one hand, global issues that the Government claims to be*

addressing through legislative reforms and other general measures in the country and, on the other hand, specific allegations of violation of the principles of freedom of association and collective bargaining in several sectors and specific trade unions. The Committee also notes that Mexico has not ratified Convention No. 98.

- 129.** *The Committee notes that the issues relating to legislative reforms following those taken in 2012 and other general measures to address the issue of protection agreements were the subject of review by the CEACR, which noted with interest that the reform proposals included initiatives to ensure union representativeness in the context of the registration of collective agreements. The Committee welcomes these developments and urges the Government to take further necessary steps, in consultation with the social partners, to find solutions to the problems posed by the phenomenon of protection unions and protection agreements. It requests the Government to continue providing information on any developments in this respect to the CEACR, to which the legislative aspects of the case are referred with regard to the application of Convention No. 87 and will therefore not pursue its examination of this aspect of this case.*
- 130.** *Moreover, as for the allegations concerning specific sectors or trade unions, the Committee, while noting the Government's indication that it had brought information on a significant number of these to the attention of the CEACR, notes that the CEACR has focused on legislative matters in its supervision of the application of the Convention and did not examine the substance of these specific allegations. Indeed, in response to government observations that some of the allegations raised in communications from trade union organizations were already the subject of cases before the Committee, the CEACR indicated that it referred to the Committee's conclusions and recommendations. In these circumstances, the Committee will proceed with the examination of this case in relation to the specific allegations of violations of the principles of freedom of association and collective bargaining arising from protection agreements and to the issues concerning anti-union discrimination. The Committee therefore requests the Government to provide all supplementary and relevant up-to-date information on the various allegations made by IndustriALL of specific situations involving the use of protection agreements, so that the Committee will have access to all relevant information when it next examines the follow-up of this case.*

Case No. 2667 (Peru)

- 131.** *The Committee last examined this case at its March 2014 session [see 371st Report, paras 89–91]. On that occasion, it requested the Government to inform it of the outcome of the ongoing judicial review and, in light of the confirmation on appeal of his wrongful dismissal, to ensure that Mr Rázuri was reinstated in his post pending the final judgment.*
- 132.** *As follow-up to the case, in a communication dated 2 May 2014, the Government reports that: (i) the Standing Chamber of Constitutional and Social Law of the Supreme Court of Justice of the Republic has declared the judicial review inadmissible; and (ii) on 22 April 2014, the enterprise in question reported that it was awaiting official notification from the judge in the judicial proceedings concerning Mr Rázuri's dismissal and would implement the court's judgment without delay.*
- 133.** *Taking due note of this information, having received no additional information from the complainant and on the understanding that since the court's ruling that Mr Rázuri had been wrongfully dismissed has been upheld, he has been reinstated, the Committee will not pursue its examination of this case.*

Case No. 2988 (Qatar)

134. The Committee last examined this case, which concerns restrictions on the right of workers, including migrant workers, to establish and join organizations of their own choosing, to strike and bargain collectively, as well as excessive state control of trade union activities, at its October–November 2015 meeting [see 376th Report, paras 136–141]. On that occasion, the Committee highlighted the need to give effect to the fundamental principles of freedom of association and collective bargaining and urged the Government to take the necessary measures without delay to amend the Labour Law (in particular sections 3, 116, 119, 120, 123 and 130) and Decree No. 10/2006. The Committee further reminded the Government that, within the framework of the ongoing collaboration with the ILO, it may avail itself of the specific technical assistance of the Office to bring national legislation and practice into full conformity with the principles of freedom of association.
135. In its communication dated 1 March 2017, the Government states that, with respect to the requested amendments to the Labour Law and the adoption of further enabling provisions, a technical cooperation agreement is currently being finalized with the ILO which includes giving a voice to workers and refers to an ILO visit in February 2017 to discuss this agreement. The Government further indicates that a decision has not yet been issued to give effect to section 127 of the Labour Law, but that it will benefit from the technical cooperation agreement under preparation. With respect to eliminating restrictions placed on the freedom of association rights of migrant workers, the Government refers to the important role of trade unions and reiterates that the Labour Law contains a chapter on the establishment of trade union organizations.
136. *The Committee takes due note of the Government’s information on its engagement with the ILO towards a technical cooperation programme. Welcoming the Government’s indication that this will include measures to give a voice to workers, the Committee urges the Government to continue this engagement and pursue its efforts to avail itself of the technical assistance of the Office to bring national legislation and practice into full conformity with the principles of freedom of association, including with respect to the need to amend the Labour Law and adopt further enabling provisions in accordance with the principles enunciated in its earlier conclusions [see 371st Report, paras 837–861] and to amend Decree No. 10/2006 so as to ensure that the model statute annexed thereto shall serve only as guidance for labour organizations and that migrant workers may fully exercise these fundamental rights. The Committee requests the Government to keep it informed of all measures taken or envisaged in respect of the above, including within the framework of the ongoing dialogue with the ILO.*

Case No. 3105 (Togo)

137. The Committee last examined this case at its June 2015 meeting [see 375th report, paras 492–531]. On that occasion, the Committee invited the parties to the dispute to endeavour to agree on the appointment of an independent arbitrator who would assist them in implementing a procedure accepted by all to enable the National Council of Employers of Togo (CNP) members to freely and quickly choose their representatives.
138. In a communication dated 8 May 2017, the International Organisation of Employers (IOE) transmits the report of the CNP–Togo electoral process and indicates that the present case moved towards a positive conclusion, with the establishment of an independent electoral committee and the election, on 3 February 2017, of the CNP Governing Body and its new President, Mr Tamegnon.
139. *The Committee notes with interest the favourable outcome of the dispute and considers that this case does not call for further examination.*

Case No. 3021 (Turkey)

- 140.** The Committee last examined this case, which concerns the conformity of the Act on Trade Unions and Collective Bargaining Agreements (Act No. 6356) with Convention No. 98, at its October 2014 meeting [see 373rd Report, paras 471–530]. On that occasion it requested the Government to carry out a full review of the impact of Act No. 6356 on the trade union movement and the national collective bargaining machinery as a whole and in the light of the outcome, revise the Act in line with the conclusions of the Committee; it further trusted that no authorization to conclude collective agreements would be withdrawn from any trade union, including the complainant, on the grounds of failure to comply with the double threshold in section 41(1) of Act No. 6356. The Committee finally requested the Government to provide information on the outcome of the appeal filed with the Constitutional Court for annulment of several provisions of Act No. 6356.
- 141.** In its communications dated 10 April and 17 June 2015, the Government indicates that Act No. 6552, adopted on 10 September 2014, lowered the representativity threshold from 3 per cent to 1 per cent and removed the transitional thresholds of 1 per cent and 2 per cent. Through an amendment made in Act No. 6645, dated 4 April 2015, to the provisional Article 6 of Act No. 6356, the sectorial threshold was removed with regard to the existing authorized trade unions, so as to ensure that they did not lose their authority and could achieve adaptation during the transitional period. The Government indicates that pursuant to this amendment, the unions which completed their transition period were entitled to conclude a collective agreement regardless of branch threshold; trade unions that fulfilled the 10 per cent threshold according to the statistics published in July 2009 and the unions established before 15 September 2012 could conclude one more collective agreement regardless of branch threshold in workplaces or enterprises where they represented the majority of workers and had already concluded collective agreements; and finally the same trade unions could conclude a collective agreement regardless of the branch threshold requirement in other workplaces and enterprises where they represent the majority of workers within one year of the effective date of the legal amendment. The Government indicates that as a result of these amendments, the branch threshold was not required for Sosyal İş and the union could conclude a collective agreement once more in the workplaces or enterprises where it had been authorized in the past and in addition, it could conclude a collective agreement in any new workplace/enterprise where it represented the majority of workers regardless of the requirement of branch threshold. The Government further indicates that Sosyal İş concluded 24 collective agreements in 2011, covering 3,282 workers; 12 in 2012, covering 376 workers; 33 in 2013, covering 5,304 workers; and 13 in 2014, covering 1,252 workers. The Government concludes that in view of the above there is no obstacle for Sosyal İş to organize and conclude collective agreements. Concentrating on organizational efforts in the future and enabling the membership of more workers within its ranks in the sector where it is organized, the trade union can gain the authority to conclude collective labour agreements.
- 142.** With regard to the alleged reduction of the number of trade unions authorized to sign collective labour agreements, the Government indicates that according to the statistics published in 2015, the unionization rate has reached 10.65 per cent (compared to 9.21 per cent in 2013, following the adoption of Act No. 6356. It further indicates that since 7 November 2013, when the e-State registration system for union membership was first introduced, nearly 450,000 workers became union members. The Government states that this figure shows a 50 per cent increase in the number of unionized workers and indicates that the number of trade unions authorized to conclude collective agreements has grown. With regard to Sosyal İş, the Government reiterates that statistics published in 2009 indicated that the union had 43,914 members, which made up 10.05 per cent of overall workers in the sector. Statistics published in January 2013 – after entry in force of Act No. 6356 – indicated that Sosyal İş Trade Union, organized in “Trade, Education, Office

and Fine Arts” sector No. 10, had 7,246 members, and its unionization rate stood at 0.34 per cent. The Government further indicates that according to statistics published in January 2015, the total number of Sosyal İş members was 8,100 and the rate of unionization was 0.31 per cent.

- 143.** The Government further indicates that the Ministry of Labour is ready to tackle any problem that might arise from the implementation of Act No. 6356 and shall examine any related request communicated by the social partners. It also informs the Committee that in a ruling dated 22 October 2014, the Constitutional Court found several provisions of Act No. 6356 unconstitutional. As a result of this ruling, the distinction between workplaces employing more or less than 30 workers in terms of filing a case for trade union related reasons was removed; the possibility of lockout was limited to the workplaces where a strike decision was taken; and banking and urban transport services were excluded from the strike ban.
- 144.** *The Committee takes note of the information provided by the Government. While it welcomes the decision of the Constitutional Court, the Committee understands that pursuant to the recently issued Decree with power of law (KHK) No. 678, the Council of Ministers can postpone strikes in local transportation companies and banking institutions for 60 days. The Committee recalls that it has already examined the implications for freedom of association of the power of the Council of Ministers to postpone strikes in certain sectors [see 374th Report, Case No. 3084, paras 855–873 and 378th Report, paras 79–84], and invites the Government to send detailed information on the application of the Decree No. 678 to the Committee of Experts on the Application of Conventions and Recommendations (CEACR), to which it refers the legislative aspects of this case.*
- 145.** *The Committee notes that in line with its previous recommendation, the Government has taken provisional measures so that the trade unions which were previously authorized to conclude collective agreements maintained their capacity to do so at the workplace/enterprise level despite their not fulfilling the double threshold requirement. It understands that this provisional measure will remain in force until July 2018. The Committee also notes that the Act has been revised to reduce the branch threshold requirement from 3 per cent to 1 per cent. Noting that the exemption granted to previously authorized trade unions is of a provisional nature, the Committee requests the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective machinery as a whole in full consultation with the social partners, and should it be confirmed that the perpetuation of the 1 per cent threshold has a negative impact on the national collective bargaining machinery, revise the law with a view to removing it. The Committee further requests the Government to keep it informed in this regard.*

* * *

- 146.** 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
2086 (Paraguay)	June 2002	March 2017
2096 (Pakistan)	March 2004	June 2016
2528 (Philippines)	June 2012	November 2015
2533 (Peru)	March 2012	March 2016
2723 (Fiji)	June 2016	March 2017
2750 (France)	November 2011	March 2016
2752 (Montenegro)	November 2016	–

Case	Last examination on the merits	Last follow-up examination
2755 (Ecuador)	June 2010	March 2011
2758 (Russian Federation)	November 2012	June 2015
2763 (Bolivarian Republic of Venezuela)	November 2016	–
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
2966 (Peru)	October 2013	October 2015
2976 (Turkey)	June 2013	March 2016
3003 (Canada)	March 2017	–
3017 (Chile)	March 2016	–
3019 (Paraguay)	March 2017	–
3022 (Thailand)	November 2016	–
3024 (Morocco)	March 2015	March 2016
3039 (Denmark)	November 2014	June 2016
3046 (Argentina)	November 2015	–
3047 (Republic of Korea)	March 2017	–
3055 (Panama)	November 2015	–
3058 (Djibouti)	March 2015	March 2017
3061 (Colombia)	March 2017	–
3072 (Portugal)	November 2015	–
3083 (Argentina)	November 2015	–
3102 (Chile)	November 2015	–
3104 (Algeria)	March 2017	–
3105 (Togo)	June 2015	–
3107 (Canada)	March 2016	–
3110 (Paraguay)	June 2016	–
3123 (Paraguay)	June 2016	–
3171 (Myanmar)	June 2016	March 2017
3172 (Bolivarian Republic of Venezuela)	March 2017	–
3180 (Thailand)	March 2017	–
3191 (Chile)	March 2017	–

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

148. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 2153 (Algeria), 2341 (Guatemala), 2362 (Colombia), 2400 (Peru), 2434 (Colombia), 2488 (Philippines), 2512 (India), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2603 (Argentina), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2673 (Guatemala), 2694 (Mexico), 2699 (Uruguay),

2700 (Guatemala), 2706 (Panama), 2708 (Guatemala), 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 and 2856 (Peru), 2860 (Sri Lanka), 2871 (El Salvador), 2882 (Bahrain), 2896 (El Salvador), 2900 and 2915 (Peru), 2916 (Nicaragua), 2917 (Bolivarian Republic of Venezuela), 2924 (Colombia), 2925 (Democratic Republic of the Congo), 2929 (Costa Rica), 2937 (Paraguay), 2946, 2954 and 2960 (Colombia), 2962 (India), 2973 (Mexico), 2979 (Argentina), 2980 and 2985 (El Salvador), 2987 (Argentina), 2988 (Qatar), 2991 (India), 2992 (Costa Rica), 2994 (Tunisia), 2995 (Colombia), 2998 and 2999 (Peru), 3006 (Bolivarian Republic of Venezuela), 3020 (Colombia), 3026 and 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 Venezuela), 3064 (Cambodia), 3065 and 3066 (Peru), 3075 (Argentina), 3077 (Honduras), 3085 (Algeria), 3087 (Colombia), 3093 (Spain), 3096 (Peru), 3097 (Colombia), 3098 (Turkey), 3101 (Paraguay), 3114 (Colombia), 3140 (Montenegro), 3142 (Cameroon), 3154 (El Salvador), 3169 (Guinea), 3177 (Nicaragua) and 3182 (Romania), which it will examine as swiftly as possible.

CASE NO. 3203

INTERIM REPORT

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

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

149. The complaint is contained in a communication from the International Trade Union Confederation (ITUC) dated 24 April 2016.
150. The Government provides its observations in a communication received on 22 March 2017.
151. Bangladesh has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Complainant's allegations

152. In its communication dated 24 April 2016, the ITUC denounces the systematic violation of freedom of association rights by the Government.
153. The complainant denounces severe and at times violent anti-union retaliation by management or its agents, particularly in the ready-made garment (RMG) sector. It alleges that leaders of many trade unions established after 2013 were brutally beaten and had to be hospitalized as a result, entire executive boards were sacked and in some cases, unionists were intimidated and harassed by the police, at the apparent behest of factory management. The complainant also denounces the continuing lack of commitment to the rule of law, stating that the police routinely fail to carry out credible investigations into cases of anti-union violence, the labour inspectorate is very slow to react, employers are not punished and most union members dismissed for trade union activity have not yet been reinstated, all of which contribute to creating a climate of impunity. Indicating that it has knowledge of over 100 acts of anti-union discrimination, including dismissals, threats, intimidation and violence, in factories where new trade unions have been registered, the complainant provides a number of representative cases from the RMG sector to illustrate its general allegation.

- On 26 August 2014, the acting union president at Global Trousers Ltd. in Chittagong (enterprise (a)) and her husband were beaten by several men armed with iron rods as they waited for the bus to take them home after work. The union's president was knocked unconscious and had to be rushed to a local hospital in critical condition. They reported that a low-level manager pointed them out to the attackers and that these men shouted throughout the assault that they would kill the pair unless they resigned from the trade union and left the factory. Workers also reported that days before the incident, a group of men with knives were waiting for the union president outside the factory gates but a change in her routine kept them from carrying out any act. The factory closed in May 2015.
- Since late April 2014, more than 60 workers at the Raaj RMG Washing Plant (enterprise (b)) were fired, false criminal charges were filed against several union leaders and at least one leader was physically assaulted. According to the factory trade union, the retaliation escalated in March 2014 after a request had been made to management for collective bargaining.
- On 10 November 2014, a camera at Global Garments Factory Ltd. (enterprise (c)), owned by a multinational holding company, recorded a female union leader being beaten while a male union leader was punched and chased off. Another female leader was pushed out of a door and attacked out of the range of the camera. This management-orchestrated beating and humiliation culminated in the unlawful dismissal of 15 leaders and activists. Although the case had been ultimately resolved through the intervention of foreign buyers acting under pressure from international unions and non-governmental organizations and had resulted in a bipartite monitoring agreement and a series of follow-up inspections in the factory, in the last year four out of five unionized factories owned by the same multinational company were closed, while no closures were announced with regard to its more than 20 non-unionized factories.
- In February 2014, workers at the Chunji Knit Ltd. (enterprise (d)) sought to form a trade union and invited union organizers from the Bangladesh Federation of Workers Solidarity (BFWS) to assist them. However, four of them were beaten and kicked by a group of 13 men with sticks, accompanied by the factory's line supervisor and the assistant production manager, and, as a result, two organizers spent several days in the hospital. They were also robbed of their mobile phones, money, labour rights pamphlets and forms to set up the new union, which had already been signed by 300 workers. When they filed charges with the police against the factory management, the management filed counter-claims against 37 leaders and organizers from the BFWS, as well as factory workers, falsely accusing them of theft and causing loss and damage, and a few weeks later, 65 workers were dismissed. An agreement between the union and the management was reached only after pressure from non-governmental organizations and buyers and not through the intervention of labour officials.
- In September 2014, after workers at BEO Apparels Manufacturing Ltd. (enterprise (e)) conveyed complaints to the management concerning compensation and workplace safety, the management terminated 48 members of the local union, including most of the leadership. When peaceful protests were held in response to the incident, the management summoned the police who ordered workers to return to their machines and assaulted them, as a result of which five workers, including the union president, required medical treatment. The police later refused to register the workers' complaints and dozens of similar instances of refusal to accept complaints after suffering attacks and rights violations have been documented. In October 2014, leaders from the Akota Garments Workers Federation (AGWF), to which the factory union is affiliated, and two union members sought the intervention of the Accord on Fire and Building Safety in Bangladesh (the Accord) but the factory demoted the two workers and initiated a

campaign of harassment against them. In December 2014, the Accord concluded that the September 2014 dismissals were retaliatory and asked the factory owner to reinstate all of the dismissed workers. Although the owner had initially agreed to do so under heavy pressure from buyers, he later withdrew the commitment claiming that factory managers would all quit if the union members were allowed to return to work. In February 2015, a delegation of representatives from the Accord, the buyers and the AGWF explained to the management that reinstatement of the dismissed union members was essential, but in response several managers physically attacked them, leading to a melee in which managers, armed with sticks and iron rods, beat a number of pro-union workers and the Accord delegation had to request police assistance to safely depart. The owner later announced that the factory would be closing and the entire workforce was dismissed in March 2015. Throughout the conflict, government agencies failed to take any action to restore workers' employment or hold the factory management accountable for its actions.

- The factory union at Dress & Dismatic Co. Ltd. (enterprise (f)) (owned by one of Bangladesh's largest garment producers) is affiliated with the Bangladesh Garment and Industrial Workers Federation (BGIWF). Several weeks after its registration, the union submitted a charter of demands to management, attempting to initiate collective bargaining but management responded with an array of retaliatory tactics – over the next three months, trade union leaders were continually relocated to different parts of the factory, rank-and-file workers were threatened with retaliatory increases in production targets if they talked to any of the union leaders, a bogus management-controlled union was formed at the factory, many workers were forced to sign a petition denouncing the union's charter of demands, and union leaders received anonymous phone calls, threatening violence. In March 2015, the union submitted a complaint to the Accord, alleging the management's failure to maintain building safety practices, which was confirmed by an Accord inspection. In April 2015, the factory management retaliated against the union by organizing anti-union workers to physically attack several union leaders, including the president, and demanding that nine union leaders resign. When they refused, police was summoned and told the workers that if they did not agree to resign they would be arrested. While most workers complied due to the pressure, the union president refused to resign but was forced by the police to leave the factory premises and, facing threats of further violence, she did not consider it safe to return. Although the workers attempted to utilize the official means of redress available – filing complaints and seeking reinstatement for the nine union leaders with the Joint Director of Labour (JDL) and the arbitration committee of the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) – these complaints yielded no corrective action. Instead, it took months of pressure from buyers, urged by the Accord, to convince the factory management to reinstate the union leaders in December 2015.
- On 29 February 2016, five workers were dismissed or coerced into resigning from the Panorama Apparels Ltd. garment factory in Gazipur (enterprise (g)). At the time of the dismissals, the workers were officers of a union whose application for registration was pending; they were, therefore, dismissed in contravention of the law which prohibits dismissals of union officers while the union's application for registration is pending without prior permission from the JDL. Accordingly, the dismissed workers reported unfair labour practices to the JDL, who found, based on their own investigation, that no violation had occurred as the five workers had resigned voluntarily. However, the investigation did not consult the concerned workers and apparently relied exclusively on the management's claims and on the resignation letters that the workers were coerced into signing. Shortly after, the application for registration of the factory union was refused for five reasons, all of which are, according to the complainant, false or pretextual justifications (further details below). When the union sought the intervention of two brands, days before the meeting was to take place, each of the five dismissed

workers were approached by local politicians of the Awami League, apparently at the behest of the management, and were asked to admit to having voluntarily resigned from the factory in exchange for large sums of money. Despite the threats, the workers attended the meeting with the brands in which the management agreed on reinstatement and on ground rules for relations with the AGWF. However, the workers reported feeling fearful of the repercussions they would face if they returned to the factory. The complainant points out that these events took place just days before the ILO tripartite mission visited the factory in April 2016.

- In 2015, more than 40 union leaders and members at Prime Sweaters Ltd. (enterprise (h)) were terminated, threatened, violently attacked and falsely charged and imprisoned because of their involvement with the factory union. The management collaborated with criminal elements in the community to force union leaders to resign or stop union activities through violence and intimidation both inside the factory and at union leaders' homes. On 11 January 2016, police came to the factory and arrested the union's president and the general secretary on false charges filed by an employee of another factory in the same group and while the general secretary was granted bail two days later, the president remained imprisoned until 18 February 2016. At the beginning of February 2016, the employer closed and shifted the factory to another location without prior notice in a clear move to dismantle the union, but officially claimed that the factory was moving as they were unable to remediate the building safety renovations mandated by the Accord engineers. The union filed several complaints with the Ministry of Labour and Employment (MOLE) and the BGMEA.

154. The complainant also expresses concern at the complete discretion of the Director of Labour (DL) to act on a complaint of unfair labour practice and states that in line with Rule 366 of the Bangladesh Labour Rules (BLR), an application regarding unfair labour practice shall be submitted to the DL within 30 days of the offence and the DL shall resolve the matter within 30 working days of receipt of such application. According to the complainant, unions are concerned with the term "resolved" as they consider that the DL can ask or coerce a dismissed worker, who alleges unfair labour practice, to accept a severance pay in order to "resolve" the matter, rather than insisting on reinstatement. It is also common practice for the DL not to discuss with the workers whose rights have been violated and legal processes can take years to conclude.

155. The complainant further denounces a continuous increase in the ratio of rejected registration applications against accepted applications (2013: 158 applications submitted, 84 approved and 44 rejected; 2014: 392 applications submitted, 182 approved and 155 rejected; 2015: 134 applications submitted, 61 approved and 148 rejected; as of mid-April 2016: 13 applications submitted, 3 approved and 14 rejected; in 2015, the JDL in Dhaka rejected 73 per cent of all union applications). The complainant also alleges that the JDL has singled out applications from the National Garment Workers Federation (NGWF), the BGIWF, the Bangladesh Independent Garment Workers Union Federation (BIGUF) and other independent garment federations because of their links with international unions and organizations and the rejection rate for these unions is even higher. In addition, out of the approximately 327 unions registered since the Rana Plaza incident in 2013, at least 44 unions were busted or are now inactive due to anti-union retaliation and at least 50 unionized factories are now closed, thus reducing the total number of registered, active unions by nearly 100.

156. It is also alleged that the JDL retains absolute discretion in the approval of a union's application for registration. According to the complainant, some applications are rejected even after unions have corrected them per the JDL's instructions and registration is often refused for reasons outside the scope of the regulations, including refusal of the factory management to let JDL officials enter the workplace to investigate an application, interviews

with workers on union activity in the presence of factory management, and alleged discrepancies between signatures on union membership forms (“D-forms”) and salary sheets, without taking into account formatting and other considerations. The complainant points to the lack of credibility of the registration system and provides specific examples.

- When an application for registration was submitted for a union at the Dacca Dyeing Garments Ltd. factory (enterprise (i)), it was rejected by the JDL for failure to reach the minimum number of members required to form a union even though the application noted 353 members and the union’s membership thus exceeded the 30 per cent requirement for registration. Two more applications for registration were rejected – one with 408 members and the other one with 535 members, representing more than half of the workers at the factory. The latter application was allegedly rejected due to duplicated D forms and missing information, although even taking this into account, the union still by far exceeded the 30 per cent minimum membership requirement necessary for registration. In November 2015, the factory management, in the presence of police, BGMEA representatives, factory inspection officials and a leader of the ruling Awami League dismissed 152 workers, almost all of whom had previously expressed support for the union and closed the factory in an apparent effort to eliminate the union once and for all.
- In February 2016, workers at Savar Sweater Ltd., Savar Sweater Ltd.-A and Orchid Sweater Ltd. (enterprise group (j)) belonging to the same multinational company filed for trade union registration but all three received initial letters of objection from the JDL in Chittagong. Even after they submitted their replies addressing all issues raised, the applications for registration were rejected by the JDL, stating, in one case, that no such factory existed (although the factory identity cards clearly identified the relevant factory) and, in the other two instances, that the unions did not represent 30 per cent of the workers in the establishment (the unions, however, report that in all three factories they far exceeded the 30 per cent minimum requirement).
- At factory (g) shortly after five union members were forced to sign resignation letters (mentioned above), the application for registration of the factory union was refused supposedly for the following reasons: it was claimed that meetings of the proposed union were held on two occasions in January 2016 but the JDL found that these did not actually occur; the president and secretary of the union were not working at the factory; 551 union members could not be identified; the union represented less than 30 per cent of the total workforce; and the list of executive committee members was not filled out correctly (all of which are, according to the complainant, false or pretextual justifications).

157. Further to the JDL’s alleged discretionary power, the complainant alleges that with increasing regularity, factory management seek injunctive relief from the courts to stay union registrations that have been properly granted. According to the complainant, this tactic is supported by the courts and has had the effect of freezing union activities for several months. It is a gross violation of the right to freedom of association and a highly questionable use of the judicial process to frustrate trade unions, as demonstrated in the following examples.

- In August 2011, after workers at enterprise (a) registered their trade union, the management challenged the registration before the High Court, which enjoined the operation of the union for a period of three months starting from September 2012 and extended it multiple times. In November 2014, it instructed the Department of Labour to file a case in the Labour Court which would decide as to whether the registration of the union had been granted legally or not. As per the order of the Court, the JDL filed a case before the Labour Court in Chittagong seeking permission to cancel the

registration but the management and the union reached an agreement in February 2015 and the management withdrew its opposition to the union.

- After workers at Donglian Fashion (BD) Ltd. (enterprise (k)) registered the Sommillito Workers Union in January 2015, the management filed a writ petition in the High Court alleging that the registration was granted unlawfully. After hearing the management's arguments and without including the union as a respondent, the High Court issued an order in November 2015 staying the registration of the union for six months pending the hearing of the writ petition. Following interventions of IndustriALL and the buyers, the management signed an agreement with the Sommilito Garments Sromik Federation (SGSF) in February 2016, in which it agreed to recognize the union and withdraw its petition.

158. The complainant also denounces union-busting in the telecommunications sector, particularly in the following enterprises.

- Workers at Grameenphone (enterprise (l)), the largest telecommunications company and the largest private sector employee in the country, have spent the past four years struggling to gain recognition of their union. The day after the enterprise was notified about the union, 163 employees were dismissed, including seven union officials. The Government has repeatedly denied the application for registration, frequently claiming information was absent even if it had been included in the application. After prolonged court proceedings, the Labour Appellate Court ordered the DL to register the union but the Government refused to issue a formal recognition and the enterprise filed a writ petition with the High Court to stay the decision, which was granted. The matter was then remanded to the Labour Court and appealed to the Labour Appellate Tribunal and the parties have been waiting for a judgment since May 2015. It is further alleged that the management of the enterprise sent a threatening email to all employees about holding employees' gatherings, meetings and campaigns, refuses dialogue with the union, and liaises with other employers in the telecommunications sector to lobby the Government to keep the sector union free and that the Government failed to take any action in relation to the anti-union activity and unfair labour practices in the enterprise. In addition, it is alleged that the broad definition of the term "supervisory officer" included in the BLR appears to be an attempt to frustrate workers from forming a union at the enterprise, as it could be invoked to render workers with any supervisory function ineligible to join a union – the enterprise argued in court that almost all of its 3,000 employees were ineligible to have a union because they were all supervisors or managers.
- On 7 February 2016, workers at Banglalink (enterprise (m)), the second largest telecommunications company in the country, submitted an application to register the Banglalink Employees Union (BLEU) and notified the employer about its establishment. A few days later, the management spoke out against the union, stating that it would hamper the company's growth, and abruptly dismissed a union activist contrary to national labour law. The management also threatened union members and employees of the company, introduced very stringent security protocols, thus creating a hostile working environment, refused any dialogue, pressured employees to use its Voluntary Separation Scheme (VSS) to leave the company and stated that if they did not accept the VSS package, the enterprise would undertake job cuts. After the BLEU petitioned the Labour Court for an injunction against the job cuts, the court temporarily halted the VSS and asked six senior managers to explain why the VSS should not be stopped and why the dismissal of the union activists should not be declared illegal. Meanwhile, in March 2016, the Government rejected the union's complaint against unfair labour practices at the enterprise stating that it was not receivable as the union was not registered and threatened the union leaders not to undertake any union activities before obtaining registration. In April 2016, the union's application for registration was

rejected by the JDL for reasons common to other cases, including alleged mismatch of signatures, alleged failure to reach the 30 per cent minimum requirement although the union represents 720 out of 2,082 permanent workers (35 per cent), and failure to present vouchers for dues collection (which is not required in the law or regulation). There are indications that the enterprise, together with other companies in the sector, lobbied the authorities to reject the union's petition in order to keep the telecommunications sector union free.

- In July 2014, workers at Accenture (enterprise (n)) successfully registered their trade union, which became the first registered trade union in the telecommunications sector. However, a month later, the management started a campaign calling for a vote as to whether the union was required in the enterprise and instructed all of the line supervisors to ensure voting of their team members against the union. This campaign failed to break the unity of the workers and the management subsequently recognized the union and engaged in collective bargaining, leading to a memorandum of settlement in September 2015. However, by October 2015, the enterprise failed to implement several provisions of the memorandum and Shafiqul Islam, the union's treasurer, was assaulted and dismissed. Workers demonstrated in protest and filed a claim against the management with police. On 27 March 2016, the DL informed the union that his office filed a case seeking the cancellation of its registration. If successful, this would eliminate the only existing union in the telecommunications sector.

159. Furthermore, the complainant denounces a negative public attitude of the Government towards workers especially during events that are outside of the international spotlight. For example, in June 2014, the Commerce Minister lashed out at trade unions for allegedly having provided information critical to the labour situation in Bangladesh to foreign governments and warned that steps should be contemplated against them. At a December 2014 Dhaka Apparel Summit, the Prime Minister warned that domestic and foreign critics of the working conditions in the country were engaged in a “conspiracy” against the RMG sector, which the unions and labour activists understood to be directed at them. According to the complainant, the Government should not threaten those who bring the many serious violations of workers' rights to light using their freedom of expression and the threat of retaliation by a cabinet minister is shocking behaviour, particularly in the current context, where violent acts of retaliation against trade unionists are on the rise. The complainant also points out that it has been four years since the murder of Aminul Islam on 4 April 2012 and recalls that Mr Islam's body was found one day after he was last seen by his family and co-workers and bore signs of extensive torture. Strong evidence indicates that he was targeted for his work as a labour organizer and human rights advocate and that the perpetrators of this crime include members of the government security apparatus. According to the complainant, no one has yet been held accountable and the Government's hostility towards trade unionists is particularly troubling, as demonstrated by the Prime Minister who, in an interview in 2013, cast doubt on the fact that Aminul Islam was ever a labour activist and claimed that no one had ever heard of him before his murder, even though the incident was featured in international media.

160. Lastly, the complainant alleges that the new draft Export Processing Zones Labour Act, 2016 (ELA), which was approved by Cabinet in February 2016, is not in conformity with the principles of freedom of association and collective bargaining and its elaboration was not consulted with workers' representatives. The complainant recalls that export processing zones (EPZs) employ roughly 400,000 workers who produce garments and footwear, as well as a variety of other manufactured goods, that under the current EPZ Workers Welfare Association and Industrial Relations Act, 2010 (EWWAIRA) trade unions are banned and only workers' welfare associations (WWAs) may be established, which do not have the same rights and privileges as trade unions, that collective bargaining does not exist in practice and that there are numerous cases in which leaders of WWAs have been dismissed with impunity

in retaliation for the exercise of their limited labour rights. It further alleges that: (i) all the provisions of the EWWAIRA in relation to formation, registration, deregistration, cancellation, functions, authority of the WWA, and formation of federations have been incorporated in the draft ELA; (ii) Chapter IX does not allow workers to form unions but only WWAs to engage in industrial relations in their respective industrial establishment; (iii) the draft ELA retains the provisions of the EWWAIRA which prohibit WWAs to maintain any links, overtly or covertly, with any political party or organization affiliated with any political party or non-governmental organization; (iv) certain categories of workers are excluded from the ELA and cannot become members of a WWA: a member of the watch and ward or security staff, drivers, confidential assistants, cipher assistants, irregular workers, workers employed by kitchen or food preparation contractors, and workers employed in clerical jobs; (v) unlike the Bangladesh Labour Act, amended in 2013 (BLA), the draft ELA does not contain any provisions allowing WWAs to take assistance from specialists for carrying out collective bargaining; (vi) Chapter XII provides for the establishment of EPZ Labour Courts and an EPZ Labour Appellate Tribunal whose powers are severely restrictive compared to the general courts constituted under the BLA – the ELA lacks provisions allowing appeal to the EPZ Labour Appellate Tribunal against a judgment of EPZ Labour Courts in individual cases and a former worker or a worker who is removed from employment is not entitled to file any case in EPZ Labour Courts seeking reinstatement; (vii) under Chapter XV, the administration of the ELA is vested in the Bangladesh Export Processing Zones Authority (BEPZA) whose General Manager has the powers of supervision and control over all the industrial establishments under his jurisdiction, including the right to inspect at any time any industrial establishment in EPZs without any prior notice; and (viii) the Labour Inspectorate, which is empowered to enforce the law outside the EPZs, still has no authority inside the EPZs.

B. The Government's reply

- 161.** In a communication received on 22 March 2017, the Government states that it is keen on maintaining a suitable climate for workers and employers by enforcing existing laws and regulations, as healthy coexistence and mutual trust between workers and employers are a prerequisite for a healthy economy and domestic and foreign investment. Having received responses from the respective agencies, the Government addresses the allegations on a case-by-case basis and provides information on administrative or legal actions taken and their outcome.
- 162.** With regard to the allegations of anti-union retaliation, the Government provides the following information.
- A police report states that the alleged incident at the enterprise (a) was unrealistic and was not proven by anyone during investigation. The factory was closed in May 2015 and all workers, including trade union leaders Mira Bosak (acting president), Nurun Nahar, Reba Begum and others, were retrenched and paid all the legal benefits (a copy of the payment was verified and justified).
 - The Sramik Karmochari Union at enterprise (b) filed a complaint to the JDL, Dhaka stating that 11 workers, including the union's executive committee members, were threatened, intimidated and beaten up by the management or its agents. An investigation confirmed that the management not only deprived workers of trade union rights, but also inhumanely dismissed many of them. A case has, therefore, been filed at the Labour Court on charges of unfair labour practices (Bangladesh Labour Law (Criminal) Case No. 180/2014) and is currently in trial.

- The incident alleging anti-union discrimination at enterprise (c) was investigated by the local police station in Chandgaon Thana in November 2014, which found that the allegations were exaggerated and ill-motivated. The officials also talked to Sumita Sarkar, the union president, who informed that the alleged incident had been solved by peaceful bipartite discussion between management and trade union leaders in the presence of buyers. There is currently no dispute between management and trade union leaders and the labour–management relation is harmonious.
- The president and general secretary of the union at enterprise (d) lodged a complaint to the JDL, Dhaka requesting legal action to be taken against the management for unfair labour practices, including violence against workers. Although a first investigation and hearing reported no resentment at the allegation, further investigation confirmed unfair labour practices, and a case has been filed at court on charges of unfair labour practices.
- The president of the union at enterprise (e) lodged a complaint to the JDL, Dhaka stating that the management dismissed many workers to keep them detached from trade union activities and requested legal action to be taken against the management. A labour officer from the JDL investigated the allegation in the factory and reported that the case had been amicably settled, the complainants had withdrawn their complaint and the factory had been closed since September 2014 due to financial problems.
- The president and the general secretary along with four workers of enterprise (f) lodged a complaint to the JDL stating that six union members had been illegally dismissed and requested legal action to be taken against the management. A labour official from the JDL was sent to the factory to inquire about the allegations and reported that the dismissed workers had been reinstated by intervention of the Accord, had joined the work in the factory and had received their wages. In July 2016, a second investigation of the matter took place and confirmed that the workers had been ousted from employment in February 2015 but reinstated from December 2015 with back wages fully paid.
- The president, the general secretary and three other members of the union at enterprise (g) filed a complaint to the JDL against the management for illegal dismissal of five workers. The JDL addressed a letter to the management requesting a written justification for the dismissals and after the management replied, two Assistant Directors of Labour visited the factory, the union office and the management to inquire into the matter. It appears from the inquiry report that the five workers had voluntarily left their job and had received their legal claims. Zakir Hossain and Bachchu Mia found jobs at a different enterprise and the complainants have withdrawn their complaints.
- The president and the general secretary of the union at enterprise (h) brought a complaint of unfair labour practices before the JDL, Dhaka stating that 17 union activists had been dismissed for their involvement in union activities. Two inquiries took place in July 2016 and their reports stated that the management had signed an agreement with the representatives of Biplobi Garments Federation, on the one hand, and with the IndustriALL Global Union and the Accord, on the other hand, according to which due payment to 40 workers would be made and the factory would be moved.

163. As regards the complainant’s concerns about the JDL’s discretion in addressing allegations of unfair labour practices, the Government states that between January and July 2016, 31 complaints of unfair labour practices were received and timely addressed by the JDL, Dhaka, out of which ten were settled, four are pending and 17 are on trial at the Labour Court. If a charge of unfair labour practice is proved, it will be punished with ten years’ imprisonment or a penalty of Bangladesh Taka 10,000 (US\$125) or both, in line with section 291 of the BLA but this is a judicial process not connected with the administration of the DL.

164. Concerning the allegations of increased rejection of applications for registration and the JDL's discretionary power in assessing such applications, the Government indicates that in so far as the period 2013 to 2015 is concerned, there is nothing it can do. For the period from January to July 2016, however, the Government states that the percentage of registrations granted has increased to 52 per cent, in comparison to 27 per cent in the previous year: out of 59 applications received by the JDL, Dhaka (45 new ones and 14 previously pending), 24 were granted, 22 were rejected and 13 are ongoing; and out of 28 applications received by the JDL, Chittagong (27 new ones and one previously pending), 11 were granted, 16 were rejected and one is pending. The Government further states that when assessing applications for registration, the JDL has to act according to the law, which is definite and does not allow for discretion. There are a number of essential elements to be taken into account, including but not limited to signatures on D forms and salary sheets, and only if all the essential elements are correct is the registration granted. The Government adds that anyone aggrieved by the actions of the Registrar may seek remedy before the labour courts and that the JDL does not control the closure of factories which result in disappearance of unions. Turning to the specific cases of rejected applications for registration alleged by the complainant, the Government indicates that: (i) as workers did not take any action at courts to challenge the rejected application for registration in enterprise (c), this shows that the Registrar's action was appropriate; and (ii) concerning the rejected applications for registration at enterprise group (j), the applications were rejected due to having less than 30 per cent of workers in favour of the proposed unions, the cancellation was done in accordance with the legal process and since the unions did not file any complaint, the rejection of their applications for registration proved legal.

165. With regard to the alleged efforts by the management to seek injunctive relief from the courts to stay union registrations, particularly in the RMG sector, the Government provides the following case-specific information.

- The management of enterprise (a) challenged the registration of the factory union on the ground that it had obtained registration through misrepresentation of facts and filed a writ petition at the High Court Division of the Supreme Court. After the hearing, the High Court directed the Registrar, Chittagong to seek permission for cancellation of the union's registration; a case was thus filed before the Labour Court and is currently pending. In the meantime, the management retrenched all the workers in May 2015, paid all legal benefits and closed the factory.
- The president and the general secretary of the union at enterprise (k) lodged a complaint against the management for unfair labour practices but on primary inquiry, it was observed that before the filing of these allegations, the factory management had lodged a complaint to the JDL alleging that the union had obtained registration by providing false information and had requested its cancellation. After inquiry found prima facie evidence, the High Court issued a stay order on the union for six months. A further inquiry found that the management and the union arrived at an agreement, which provides for the withdrawal of the management's writ petition asking for cancellation of the union registration. The management recently started the withdrawal process.

166. Concerning the allegations of union-busting activities in the telecommunications sector, the Government provides the following information.

- At the telecommunications enterprise (l), workers attempted to form two trade unions. In both instances, the events developed as follows: while registration was initially refused (in one case, on the ground that most of its members were not workers of the enterprise but were outsourced from a different company and that the total number of workers in the enterprise could not be ascertained and as a result the minimum number of workers required could not be determined), it was appealed by the unions and the

High Court ordered the DL to register the unions; the DL further appealed the decisions but these were confirmed by the Labour Appellate Tribunal and the unions were registered. However, the enterprise appealed the registration of the unions and a stay order was issued on the operation of the unions pending the decision on the writ petitions. The Government indicates that since the matter is judicial, the DL could not take any further action on any allegations of unfair labour practices.

- The proposed union at the telecommunications enterprise (m) did not fulfil one of the essential requirements – it did not represent the minimum 30 per cent of the total employees but only 21.23 per cent (442 out of 2,081 employees) – and its registration was thus refused.
- The union at the telecommunications enterprise (n) is a registered trade union but, in violation of the law, its leaders assembled and blocked the entrance to the company's office on two occasions in October 2015 and three times in December 2015, obstructing several workers from entering or leaving their offices, all of which is available on video footage. After the management requested the DL to take the necessary remedial measures and legal action against the union, an inquiry officer was appointed to investigate the allegations; three visits were held and both the management and the union were interrogated and the union submitted a written statement. The inquiry officer was told by the management that due to the union's undisciplined activities, expansion of the company was not possible and if the union continued, the establishment would have to close down. The inquiry report confirmed that union leaders and a few members illegally assembled in the establishment and obstructed officers and staff from entering or leaving the office and a case was thus filed on charges of unfair labour practices at the Labour Court, Dhaka and is now under trial.

167. Regarding the complainant's concerns about freedom of association rights in EPZs, the Government states that: (i) it is a misconception that EPZ workers are prohibited from forming trade unions, as these have been termed as WWAs in EPZs; (ii) labour rights in EPZs are ensured through the EWWAIRA, 2010; (iii) BEPZA has demonstrated a genuine and continued commitment to its enforcement and is putting its best efforts to form WWAs in all enterprises; (iv) out of 456 enterprises in operation, 417 are eligible to form WWAs, 306 organized a referendum and WWAs were created in 231 enterprises; (v) in line with section 37 of the EWWAIRA, a registered WWA is a collective bargaining agent and can negotiate directly with the employer on wages, working hours and other terms and conditions of employment; (vi) between January 2013 and December 2015, WWAs submitted 260 charters of demands, all of which were settled amicably and led to the signing of agreements; (vii) foreign officials, ambassadors and representatives of organizations visited various EPZs, observed the implementation of the EWWAIRA, witnessed some referenda and expressed satisfaction with the free, fair and credible elections; (viii) no WWA leader or member has ever been dismissed by BEPZA for the exercise of their labour rights; (ix) in order to avoid anti-union discrimination, BEPZA conducts neutral investigations and personal hearings with the concerned workers and any aggrieved worker may appeal to the EPZ Labour Tribunals and the EPZ Labour Appellate Tribunal – WWA members are thus protected against anti-union discrimination and the allegation of workers' dismissal without reason is, therefore, unrealistic; (x) all compliance issues, labour rights, fire and factory building safety are being properly supervised and monitored by Industrial Relations Officers; (xi) inspection is conducted for 62 parameters in line with international labour standards, including among others, social protection and social dialogue and employment relationships; and (xii) 135 officials, including 45 industrial relations officers and 90 counsellors cum inspectors (60 social and 30 environmental), as well as two environment specialists, are efficiently engaged in such inspections. As a result, harmonious labour–management relationship, congenial working atmosphere, sound industrial relations and uninterrupted production environment prevail in the EPZs and workers benefit from

better protection under the existing EPZ laws, rules and regulations than outside the zones. Introduction of any alternative, which is less favourable than the existing benefits, may thus lead to workers' unrest.

- 168.** Addressing the alleged non-compliance of the new ELA with the principles of freedom of association and the perceived lack of workers' consultation during its elaboration, the Government reiterates that it is always concerned with the protection of the rights and privileges of workers of the enterprises operating in EPZs. It outlines the laws applicable to EPZs since 2004 – the EPZ Workers' Association and Industrial Relations Act, 2004 and the EWWAIRA 2010 – before stating that in 2013, in order to ensure a better protection of, and more rights and privileges to, EPZ workers, it formed a high-level committee headed by the Senior Secretary of the Prime Minister's Office in order to examine the implementation of national labour law in EPZs in light of existing laws, rules, regulations and practices. After a pragmatic and neutral analysis, the Committee formulated a draft of the Bangladesh EPZ Labour Act, 2016, which had been presented to the ILO Country Office in Dhaka and the US Embassy in Dhaka. BEPZA had also consulted and exchanged views on the proposed draft law with EPZ workers' representatives, investors and other relevant stakeholders, whose opinions and comments had been addressed in the draft law to the extent possible in conformity with the relevant ILO Conventions and international labour standards. The Government further states that BEPZA appointed 90 counsellors, three conciliators and three arbitrators to provide necessary legal assistance to workers and collective bargaining agents in EPZs and that it had designated seven Labour Tribunals and one Labour Appellate Tribunal for eight EPZs in order to settle labour-related disputes. The Government confirms that any aggrieved party, including individual workers and job-separated workers, have the right to file a case before the labour courts, which, since their establishment in 2011, settled 86 out of a total of 161 cases, including cases of dismissed workers. The allegation that workers may not appeal to the Appellate Tribunal in individual cases is, therefore, not correct.

C. The Committee's conclusions

- 169.** *The Committee notes that this case concerns allegations of systematic violation of freedom of association rights, including through repeated acts of anti-union retaliation, arbitrary denial of union registration and union-busting activities, as well as lack of law enforcement and the Government's public hostility towards trade unions. The complainant also denounces non-compliance of the new draft Bangladesh Export Processing Zones Labour Act, 2016 (ELA) with freedom of association and collective bargaining principles.*
- 170.** *The Committee notes that the complainant denounces severe and at times violent anti-union retaliation by factory management or their agents, particularly in the RMG sector, and provides a number of representative examples. The Committee observes that these allegations refer to numerous instances of intimidation, harassment, threats, physical assaults and beatings of union members often requiring medical treatment or hospitalization, transfers, bribery, coercion to sign resignation letters, dismissals, false criminal charges, arrest and detention and that, according to the complainant, they were, at times, perpetrated by the police or with their collaboration. The complainant also raises the issue of the 2012 murder of a trade unionist, alleging involvement of the state apparatus and the unresolved nature of the case. The Committee further observes that while the complainant denounces a climate of impunity resulting from the Government's lack of commitment to the rule of law, slowness of the labour inspectorate, failure by the police to investigate allegations of anti-union violence, JDL's discretion in dealing with unfair labour practices, absence of punishment and lack of remedial actions, the Government indicates that it is keen on maintaining a healthy coexistence and mutual trust between workers and employers, that complaints of unfair labour practices, when founded, are either settled or sent on to the labour courts and that administrative or legal actions were taken in each of*

the mentioned illustrative cases. In this regard, the Committee observes that while in some instances, the Government's inquiry found that the allegations were exaggerated or ill-founded, in others, it confirmed the existence of anti-union retaliation, cases were filed at the labour courts and are currently pending. While taking due note of the measures taken, the Committee also observes that in many situations, the Government inquiry simply concluded that labour-management disputes had been solved by a bipartite agreement or the concerned factories had been closed but did not establish whether the alleged violations had taken place or not. The Committee considers that in these instances, further measures could have been taken to inquire and bring the responsible persons to account, especially considering the gravity of the allegations. In this regard, the Committee wishes to recall the conclusions of the high-level tripartite mission to Bangladesh in April 2016, echoed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which noted with concern the numerous allegations of anti-union discrimination and harassment and recommended the Government to continue to provide training and capacity-building to labour officers in order to bolster their capacity to inquire into such allegations and to set up a publicly accessible database to track unfair labour practice complaints, the steps taken to inquire and address them, as well as remedies and sanctions imposed, which would assist in rendering the MOLE more efficient and transparent. It further notes the 2016 conclusions of the Conference Committee on the Application of Standards (CAS), which urged the Government to investigate as a matter of urgency all acts of anti-union discrimination, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law. The Committee invites the Government to provide full particulars on the progress made in relation to these matters to the CEACR.

- 171.** *The Committee considers that the described situation raises serious concerns as to the environment for free exercise of trade union rights. It wishes to emphasize that the right 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 the governments to ensure that this principle is respected. As regards allegations of anti-union tactics in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, the Committee considers such acts to be contrary to Article 2 of Convention No. 98, which provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration. The arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers' organizations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association. In the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. 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, paras 44, 858, 62, 50 and 771]. Regretting that many proceedings concerning allegations of anti-union retaliation seem to have been pending for several years without resolution, the Committee wishes to emphasize that justice delayed is justice denied [see **Digest**, op. cit., para. 105]. The Committee requests the Government to take the necessary measures to ensure that all anti-union acts alleged in this case, including those allegedly perpetrated by the police and the 2012 murder of a trade unionist – allegations which raise serious concern – are fully investigated and that their perpetrators are held accountable, so as to avoid occurrence of such serious acts in the future, and to inform it of any developments in this regard. The*

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

- 172.** *The Committee further notes that the complainant denounces a number of general practices, both by the Government and factory management, in relation to registration of trade unions and provides specific examples to illustrate its point. Firstly, it alleges that the approval of trade union applications remains at the absolute discretion of the JDL, who often rejects applications for unfounded reasons or for reasons outside the scope of the law and even after they had been corrected as per the JDL's instructions, and that the ratio of rejected applications against accepted applications has been continuously increasing since 2013, with rejection particularly targeting organizations with international affiliation. The Committee notes, however, that the Government denies this allegation and states that assessment of applications for registration by the JDL is done strictly within the law, which does not allow for discretion but instead requires a number of essential elements to be met by trade unions to obtain registration, and that the percentage of registrations granted in the first half of 2016 increased to 52 per cent, compared to 27 per cent during the previous year. While taking due note of the reported increase in the percentage of trade unions registered in the first half of 2016, the Committee observes that, according to this information, almost half of all trade union applications submitted during this period in the Dhaka region and more than half of the applications submitted in the Chittagong area have been rejected. The Committee must express concern at such a high percentage of rejected applications, especially considering that the right to official recognition through legal registration is an essential facet of the right to organize since that is the first step that workers' or employers' organizations must take in order to function efficiently, and represent their members adequately [see **Digest**, op. cit., para. 295]. The Committee further recalls that although the registration procedure very often consists in a mere formality, there are a number of countries in which the law confers on the relevant authorities more or less discretionary powers in deciding whether or not an organization meets all the conditions required for registration, thus creating a situation which is similar to that in which previous authorization is required. Similar situations can arise where a complicated and lengthy registration procedure exists, or where the competent administrative authorities may exercise their powers with great latitude; these factors are such as to create a serious obstacle for the establishment of a trade union and lead to a denial of the right to organize without previous authorization [see **Digest**, op. cit., para. 296]. In this regard, the Committee wishes to recall the conclusions of the CEACR which noted that, according to the report of the high-level tripartite mission, the procedure for registration of trade unions and its practical application were heavily bureaucratic and had the likelihood of discouraging trade union registration and of intimidating workers, and the combination of the broad discretionary powers of the JDL when processing applications for registration, the lack of transparency on the reasons for rejection and delays in judicial proceedings have led to an increased rejection of registration requests and a decreasing registration of trade unions over the past few years. In light of these considerations, the Committee requests the Government to take all necessary measures to facilitate the registration process so as to ensure that it is a simple formality, which should not restrict the right of workers to establish*

organizations without previous authorization. The Committee requests the Government to report progress on this issue to the CEACR, to which it refers this aspect of the case and which has, for a number of years, closely followed developments in this regard.

- 173.** *Secondly, the complainant alleges that even when registration is granted, factory management often seek injunctive relief from courts to stay union registration, thus freezing union activities for prolonged periods of time pending the final hearing on the issue, and resort to various means of union-busting and retaliation against trade unionists. The Committee observes that to illustrate this point, the complainant provides specific examples of factories in the RMG and telecommunications sectors, where trade union registration was repeatedly challenged by the management or where the union and its members were subjected to union-busting and retaliatory measures, and alleges that there seems to be a movement by telecommunications enterprises to lobby the authorities to keep the sector union free. Taking due note of the Government's comments on the listed situations, the Committee observes from the information provided that in some cases, procedures for cancellation of union registrations are still pending or are in the process of being settled by the parties and that there is a court case pending against the only existing trade union in the telecommunications sector for unfair labour practices. While emphasizing that trade unions and their members have an obligation to respect the law of the land, the Committee also expresses concern at the severe implications the alleged requests for cancellation of registration, union-busting and lobbying can have on the functioning of trade unions, especially in light of the overly lengthy nature of many of these proceedings. In light of these considerations, the Committee requests the Government to take the necessary measures to ensure that the procedure available to challenge trade union registration is not misused so as ultimately to become a tool for impeding, or significantly delaying, workers' exercise of their freedom of association rights and that any future allegations of union-busting are fully and expeditiously investigated, and to keep it informed of any developments in this regard. The Committee also requests the Government to keep it informed of the outcome of any pending proceedings relating to cancellation of trade union registrations in the abovementioned factories.*
- 174.** *The Committee further notes the complainant's allegations that on several occasions, government representatives have made public statements showing a negative attitude and hostility towards trade unionists, perceived by the latter as threats of retaliation, and regrets that the Government does not directly respond to this allegation. Noting in particular the complainant's concern that such hostility may have a negative impact on freedom of expression of trade unionists, the Committee recalls that the right to express opinions through the press or otherwise is an essential aspect of trade union rights [see **Digest**, op. cit., para. 155]. In view of the importance it attaches to the principles of freedom of association and collective bargaining and in light of the Government's general commitment to ensure full respect of trade union rights, the Committee firmly trusts that all government entities and representatives will refrain from publicly expressing hostility or antagonism towards trade unionists so as to contribute to an environment conducive to the full development of trade union rights.*
- 175.** *In relation to freedom of association rights in EPZs, the Committee observes that while the complainant denounces the fact that workers in EPZs do not have the same trade union rights as workers outside the zones and alleges that the new draft ELA is not in conformity with the principles of freedom of association and collective bargaining and that workers' representatives were not consulted in its elaboration, the Government indicates that labour rights in EPZs are ensured through the applicable legislation, which often guarantees better working conditions than outside the zones, and that the draft ELA, which will further improve workers' protection, was elaborated by a high-level committee headed by a senior government official, in consultation with EPZ workers' representatives and other stakeholders. The Committee observes that some of the issues raised by the complainant*

include alleged limitation on the right to organize, as workers can only form a WWA, prohibition of any affiliation with a political party or a non-governmental organization, exclusion of certain categories of workers from its scope of application, broad supervision powers of the zone authority and exclusion from the purview of the labour inspectorate established under the labour legislation. In this regard, the Committee wishes to recall that many of these issues had been previously addressed by the Committee in relation to the EPZ Workers' Association and Industrial Relations Act, 2004 in Case No. 2327. In particular, the Committee considered that the Act contained numerous and significant restrictions and delays in relation to the right to organize in EPZs and urged the Government to review the Act so as to ensure meaningful respect for the freedom of association of EPZ workers (337th Report, paras 191–213). The Committee notes with regret that more than a decade later many of the same issues continue to arise in relation to the draft ELA and observes that the CEACR has addressed them in its last examination of compliance by Bangladesh with Conventions Nos 87 and 98. The Committee recalls that the CEACR recognized that the draft ELA represented an effort to provide the zones with protection similar to that provided outside the zones and in many areas reproduced the provisions of the BLA, but also observed that the sections concerning freedom of association and unfair labour practices mainly transposed into the draft the text of the EPZ Workers Welfare Association and Industrial Relations Act, 2010 (EWWAIRA), the non-conformity of which had already been addressed on numerous occasions. The CEACR encouraged the Government to consider replacing Chapters IX, X and XV of the draft ELA by Chapter XIII of the BLA (bearing in mind the further revisions called for by the CAS and the CEACR), thereby providing equal rights of freedom of association to all workers and bringing the EPZs within the purview of the labour inspectorate. The Committee emphasizes that workers in EPZs – despite the economic arguments often put forward – like other workers, without distinction whatsoever, should enjoy the trade union rights provided for by the freedom of association Conventions [see *Digest*, *op. cit.*, para. 264]. The Committee expects the Government to take the necessary measures, including legislative, to ensure that workers in EPZs can fully benefit from freedom of association rights and requests the Government to report progress on this matter to the CEACR, to which it refers this aspect of the case.

The Committee's recommendations

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

- (a) The Committee expects that the important technical cooperation programme currently ongoing in the country will assist the Government to achieve the recommendations below and that it will have full information in this regard for its next examination.**
- (b) The Committee requests the Government to take the necessary measures to ensure that all anti-union acts alleged in this case, including those allegedly perpetrated by the police and the 2012 murder of a trade unionist – allegations which raise serious concern – are fully investigated and that their perpetrators are held accountable, so as to avoid occurrence of such serious acts in the future, and to inform it of any developments in this regard. The Committee requests the Government to keep it informed of the outcome of ongoing judicial proceedings relating to the alleged anti-union retaliation in the cases of the Sramik Karmochari Union and the union at enterprise (d), as well as the measures taken to ensure their implementation by the employers. The Committee also expects the Government to take all necessary measures to ensure that the police and other state authorities are not used as an instrument**

of intimidation and harassment of workers and that all future allegations of anti-union violence reported to the police are properly and expeditiously investigated in order to avoid impunity. The Committee encourages the Government, in collaboration with the social partners and the ILO, to institute training on human rights, civil liberties and trade union rights so as to assist the police and other state authorities in better understanding the limits of their role in respect of freedom of association rights and to ensure the full and legitimate exercise by workers of these rights and liberties in a climate free from fear. The Committee further invites the Government to provide full particulars in relation to the steps taken to fully address complaints of anti-union discrimination, including by means of a publicly accessible database, to the CEACR.

- (c) The Committee requests the Government to take all necessary measures to facilitate the registration process so as to ensure that it is a simple formality, which should not restrict the right of workers to establish organizations without previous authorization. The Committee requests the Government to report progress on this issue to the CEACR, to which it refers this aspect of the case and which has, for a number of years, closely followed developments in this regard.*
- (d) The Committee requests the Government to take the necessary measures to ensure that the procedure available to challenge trade union registration is not misused so as ultimately to become a tool for impeding, or significantly delaying, workers' exercise of their freedom of association rights and that any future allegations of union-busting are fully and expeditiously investigated, and to keep it informed of any developments in this regard. The Committee also requests the Government to keep it informed of the outcome of any pending proceedings relating to cancellation of trade union registrations in the abovementioned factories.*
- (e) The Committee firmly trusts that all government entities and representatives will refrain from publicly expressing hostility or antagonism towards trade unionists so as to contribute to an environment conducive to the full development of trade union rights.*
- (f) The Committee expects the Government to take the necessary measures, including legislative, to ensure that workers in EPZs can fully benefit from freedom of association rights and requests the Government to report progress on this matter to the CEACR, to which it refers this aspect of the case.*
- (g) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.*

CASE NO. 3189

DEFINITIVE REPORT

**Complaint against the Government of the Plurinational State of Bolivia
presented by
the Federation of Medical Practitioners' Unions and Allied Branches of the
National Health Fund (FESIMRAS)**

Allegations: The complainant organization alleges restrictions on the functioning of trade union bodies through changes contained in a draft bill to reorganize a public health fund

- 177.** The complaint is contained in a communication from the Federation of Medical Practitioners' Unions and Allied Branches of the National Health Fund (FESIMRAS) dated 20 November 2015.
- 178.** The Government sent its observations in a communication dated 7 April 2017.
- 179.** The Plurinational State of Bolivia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 180.** In its communication of 20 November 2015, the FESIMRAS states that in September 2015 the Ministry of Health approved a draft bill proposing, as a matter of priority and in the national interest, a plan to reorganize the National Health Fund (hereinafter the Fund), which was approved by Supreme Decree No. 1403 of 9 November 2012. The complainant alleges that the draft bill on Fund reorganization imposes restrictions on the functioning of health professionals' trade union and collegial bodies, and that, if approved, the bill will affect their rights of organization, member representation and collective bargaining.
- 181.** The complainant refers, firstly, to article 10(1) of the draft bill, which asserts that the posts of health professionals and workers will be assigned on the basis of a merit-based competition held in accordance with specific regulations issued by the Ministry of Health (institutionalization procedures) without the involvement of professional colleges and associations. Paragraph IV of the same article states that an institutionalization committee is being created without the participation of professional colleges and associations and with membership comprising the Ministry of Health, the highest executive authority of the Fund or its representative and the Bolivian Workers' Confederation (COB).
- 182.** The complainant also refers to a single abrogative and derogatory clause in the draft bill that provides for the invalidation of articles 5 and 6 of Law No. 3131, which recognize the Medical College of Bolivia as the leading body for medical professionals in organizational, scientific, trade union and professional development matters. The complainant also states that the single transitional provision in the draft bill introduces new grounds for the dismissal of Fund staff which contrast with those set out in article 16 of the General Labour Act and are detrimental to the employment stability proclaimed and guaranteed by the Constitution of the Republic. Specifically, the single transitional provision in the draft bill states: "the following are considered to be non-compliance with the employment contract or agreement and as cause for dismissal subject to proceedings in the framework of article 16 of the

General Labour Act: incompatible family relationship; nepotism; influence peddling; falsification of academic certificates and other documents submitted in the course of recruitment or institutionalization; trafficking and/or diversion of patients to private clinics in contravention of the institution's interests; improper use of institutional property for private reasons, and proven abuse of patients”.

B. The Government's reply

- 183.** In its communication dated 7 April 2017, the Government transmits a report by the National Legal Department of the Fund, dated 14 March 2017, and a report by the Legal Department of the Ministry of Health dated 15 March 2017.
- 184.** The report by the National Legal Department of the Fund states that the draft bill does not violate any existing legal provision, in particular because it is still at the draft stage and has yet to be approved. The report also points out that, in accordance with articles 162, 163 and 164 of the National Constitution and articles 112(2), 113, 114 and 115 of the Constitutional Procedure Code, queries, amendments and changes must be submitted to the Legislative Assembly or, where appropriate, the Chamber of Senators.
- 185.** The report by the Legal Department of the Ministry of Health states that, under the National Constitution, the right of legislative initiative is granted to the government, senators and parliamentary deputies for the purpose of submitting to the Chambers a text which then becomes law once approved by them. The report emphasizes that the draft bill in question was written in clear, accurate and consistent terms, with grounds for cause, and that, since it has not yet been dealt with by the Plurinational Legislative Assembly of Bolivia, no law has been promulgated. The report concludes that the complaint submitted by FESIMRAS lacks any real substance and that, because it refers to a draft bill which is not yet law in the Plurinational State of Bolivia, no violation of its trade union rights has occurred.

C. The Committee's conclusions

- 186.** *The Committee observes that in the present case, FESIMRAS alleges that in September 2015 the Ministry of Health approved a draft bill concerning reorganization of the Fund which imposes restrictions on the functioning of health professionals' trade union and collegial bodies and which, if approved, would affect their rights of organization, member representation and collective bargaining. The Committee notes that, in its reply, the Government confines itself to pointing out that the draft bill on reorganization of the Fund has not yet been dealt with by the Legislative Assembly and that therefore no violation of trade union rights has occurred.*
- 187.** *The Committee observes that, although the draft bill invalidates the provisions of Law No. 3131 which recognize the Medical College of Bolivia as the leading union body for medical professionals and specifically excludes the professional colleges and associations from taking part in the merit-based competition process to institutionalize posts and in the committee being set up for that purpose, it expressly recognizes the participation of the Bolivian Workers' Confederation (COB) in the joint committee alongside the Ministry of Health and the highest executive authority of the Fund. The Committee also observes that, as stated in the draft bill, the COB contributed to the Fund reorganization plan and that, according to Article 7 of Supreme Decree No. 28719 concerning institutionalization of the Fund, the COB represents the workers' sector on the Fund's governing board. In this regard, while it does not know the level of representativeness of the sector's various union bodies, the Committee recalls that the fact that a trade union organization is debarred from membership of joint committees does not necessarily imply infringement of the trade union rights of that organization. But for there to be no infringement, two conditions must be met:*

*first, that the reason for which a union is debarred from participation in a joint committee must lie in its non-representative character, determined by objective criteria; second, that in spite of such non-participation, the other rights which it enjoys and the activities it can undertake in other fields must enable it effectively to further and defend the interests of its members within the meaning of Article 10 of Convention No. 87 [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 1091].*

- 188.** *Furthermore, the Committee recalls that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers [see **Digest**, op. cit., para. 1075]. In a previous case presented by FESIMRAS which also concerned a plan to reorganize the Fund, the Committee emphasized the importance it attaches to the promotion of dialogue and consultation on matters of common interest between the public authorities and the most representative professional bodies in the sector concerned [see 373rd Report, Case No. 3002, para. 75]. In the light of the foregoing, the Committee expects that the Government will ensure that the draft bill on reorganization of the Fund, before being submitted to Parliament, will be the subject of consultation with representative workers' and employers' organizations from the sector, and that it will comply fully with the abovementioned principles of freedom of association.*

The Committee's recommendation

- 189.** *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 ensure that the draft bill on reorganization of the Fund, before being submitted to Parliament, will be the subject of consultation with representative workers' and employers' organizations from the sector and that it will comply fully with the principles of freedom of association.

CASE NO. 3231

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

Complaint against the Government of Cameroon presented by the National Union of Contract Public Teachers of Cameroon (SYNAEEPCAM)

Allegations: The complainant alleges that it has been subjected to harassment and retaliation, including through the registration procedure and the failure to count votes cast in its favour during the 2016 trade union elections

- 190.** The complaint is contained in a communication dated 3 August 2016 from the National Union of Contract Public Teachers of Cameroon (SYNAEEPCAM).

- 191.** The Government sent its observations in a communication dated 3 November 2016.
- 192.** Cameroon has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

- 193.** In its communication of 3 August 2016, the complainant states that it did not receive its registration certificate until nine months after all of the procedural requirements set out in section 11 of the Labour Code had been met. The certificate was received on 4 August 2015 but, according to the complainant, the current General Secretary of the Ministry of Labour and Social Security and trade union registrar is considering cancelling it in violation of Article 4 of Convention No. 87. The complainant maintains that the General Secretary summoned the leaders of SYNAEEPCAM to a meeting held on 5 August 2016 in order to, in the words used in the summons, examine its "administrative file".
- 194.** The complainant alleges that the results of the 2016 social election were flawed owing to the local labour administration's deliberate wish to ignore the records of the election of many staff representatives who were SYNAEEPCAM members in several of Cameroon's regions and departments: an attempt to conceal records attesting to the election of (i) 1,000 SYNAEEPCAM members in the department of Manyu, Southwest Region; (ii) 384 SYNAEEPCAM members in the department of Meme, Southwest Region; and (iii) 832 SYNAEEPCAM members in the department of Maritime Sanaga, Littoral Region. The complainant maintains that high-level Ministry of Labour and Social Security officials manipulated and even intimidated the heads of government bodies in several areas where SYNAEEPCAM had nominated candidates, forcing them to send them documentation after the deadline in order to justify the failure to take the election records into account.
- 195.** The complainant alleges that the Ministry of Labour and Social Security Decree of 11 July 2016, attesting to the rankings of the trade union confederations at the national level, prevented the Trade Union Confederation "Entente" from being attributed the election results obtained by its affiliate, SYNAEEPCAM, and thus does not reflect the true representativeness of Cameroon's trade union confederations.
- 196.** With respect to the aforementioned trade union elections in the department of Mezam, Northwest Region, the complainant also reports that on 30 March and 5 April 2015, a local union representative, Mr Innocent Ngwa Folum, received from his supervisor, the departmental representative of the Ministry of Primary Education, two requests for an explanation which were unrelated to his work but which, the complainant claims, were sent for the sole purpose of intimidating him because he was a member of SYNAEEPCAM and, as such, had carried out trade union activities.
- 197.** Lastly, the complainant maintains that there is widespread fraud within the labour administration, which has registered spurious trade unions, and that it has referred the case to the courts, alleging forgery and misappropriation of public funds.

B. The Government's reply

- 198.** In a communication dated 3 November 2016, the Government denies the allegation that it created additional red tape in order not to issue SYNAEEPCAM a registration certificate. It explains that it has embarked on a clean-up of the trade union movement, which had been demanded and supported by the union leaders, in order to have an accurate, updated and reliable trade union registry. It states that while certifying the documents contained in the

unions' applications for registration following their verification by the Ministry of Justice at the request of the trade union registrar, specifically in the case of the extracts from court records submitted by SYNAEEPCAM, it was discovered that those extracts were forgeries. The Government states that section 13(1) of the Labour Code authorizes the registrar to cancel a union's registration if its registration certificate has been fraudulently obtained but that the Government took no steps in that regard, preferring to invite the National President of the union to a meeting held on 5 August 2016 in order to review its official file, but that the union leader refused this invitation.

- 199.** Concerning the trade union elections, the Government states that on 13 January 2016, the Ministry of Labour and Social Security decided to hold the elections for staff representatives on 1 March and 8 April 2016 and to organize the electoral campaign. Joint departmental, regional and national committees were established in order to collect the ballots and verify and analyse the results in order to ensure the accuracy, equity and credibility of the election.
- 200.** The Government reports that when the ballots cast during the trade union elections held on 1 March and 8 April 2016 – in which SYNAEEPCAM participated and the results of which were announced by the Joint National Committee at meetings held on 23 March and 26 May 2016 – were counted, the trade union, which is an affiliate of the Trade Union Confederation “Entente”, made the dubious claim that over 4,000 of its members had been elected staff representatives, making it the country's most representative trade union confederation. The Government explains that this unprecedented performance in an election by a newly established union was vigorously challenged by the members of the Joint National Committee, in particular by its worker and employer members, and that the local administrative authorities involved in the election also drew the attention of the Ministry of Labour and Social Security to instances of manipulation and fraud by the union in question.
- 201.** The Government explains that the Joint National Committee then instructed its President to send three teams to the regions in which fraud was alleged to have occurred in order to verify the authenticity of the challenged election records and that the findings submitted by these teams mention major inconsistencies, falsified records, artificial expansion of the election rolls and other manoeuvres orchestrated by the trade union. On this point, the Government emphasizes that at a meeting held on 26 May 2016, the Joint National Committee recommended that: (i) the procedure for cancelling SYNEEEPCAM's registration certificate be initiated; and (ii) in future, any confederation that tampers with the accuracy and credibility of an election through illegal and fraudulent practices be penalized.
- 202.** With respect to the alleged registration of spurious organizations, the Government states that the case mentioned by the complainant, which concerns a specific trade union confederation, is under investigation by the courts and that it will keep the Committee informed of the outcome of those proceedings.

C. The Committee's conclusions

- 203.** *The Committee notes that the complainant's allegations concern: (i) the conditions under which SYNAEEPCAM's registration certificate was granted and the threat to dissolve it, whereas other organizations are accorded preferential treatment by the Government; (ii) the results of the 2016 trade union elections, the mechanism used to determine the representativeness of the country's trade union confederations; and (iii) intimidation of a SYNAEEPCAM representative.*
- 204.** *With regard to the registration procedure, the Committee notes that it took over nine months and that the Government provides no explanation of the slowness of this administrative process. As it has received no information on this point, the Committee would like to recall that a long registration procedure constitutes a serious obstacle to the establishment of*

organizations and amounts to a denial of the right of workers to establish organizations without previous authorization [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 307].

- 205.** *The Committee takes note of the information provided by the Government to the effect that during the process of certifying the documents contained in trade unions' applications for registration – which, in the case of SYNAEPCAM, was initiated after the registration certificate had been issued – the trade union registrar requested the Minister of Justice to verify the authenticity of the extracts from court records submitted by SYNAEPCAM and that the results of this ministerial inquiry revealed that those extracts were forgeries. While noting that the registrar did not avail himself of his prerogatives under article 13(1) of the Labour Code, which authorizes registrars to cancel a union's registration where its registration certificate has been fraudulently obtained, the Committee recalls that the dissolution of trade union organizations is a measure which should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defence are fully guaranteed [see **Digest**, op. cit., para. 699].*
- 206.** *Concerning the failure to take into account some election records that were favourable to SYNAEPCAM, and thus to the Trade Union Confederation "Entente" of which it is an affiliate, the Committee notes that, according to the information and documents provided by the Government, the Joint National Committee, a tripartite body responsible for collecting the ballots and verifying and analysing the results of the staff representative elections held on 1 March and 8 April 2016, found major inconsistencies and, as a result, did not take the challenged election records into account. Recalling that cases in which the results of trade union elections are challenged must be referred to the judicial authorities in order to guarantee an impartial, objective and expeditious procedure [see **Digest**, op. cit., para. 442], the Committee observes that in this case, SYNAEPCAM did not challenge the results of the trade union elections before the courts and requests it to indicate the reasons for not doing so.*
- 207.** *With respect to the allegation that a local union representative, Mr Innocent Ngwa Folum, received from his supervisor, the departmental representative of the Ministry of Primary Education, two requests for an explanation which were made for the sole purpose of intimidating him because he was a member of SYNAEPCAM and his activities related to the abovementioned trade union elections, the Committee requests the complainant organization to provide additional information on the actions taken by the departmental representative.*
- 208.** *Lastly, the Committee takes note of the allegation that one trade union was accorded preferential treatment with regard to the registration procedure whereas SYNAEPCAM claims to be the subject of harassment. The Committee observes that this issue has been referred to the national courts and that the proceedings are ongoing. It requests the Government to inform it of the outcome of those proceedings.*

The Committee's recommendations

- 209.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee requests the complainant organization to indicate the reasons why it did not challenge the results of the 2016 trade union elections before the courts and to also provide additional information on any actions taken by the departmental representative of the Ministry of Primary Education with respect to a local union representative, Mr Innocent Ngwa Folum.*

- (b) *The Committee requests the Government to inform it of the outcome of the proceedings before the national courts concerning the allegation of preferential treatment with regard to the procedure for registration of a trade union confederation in Cameroon.*
- (c) *The Committee invites the parties concerned to have recourse to social dialogue mechanisms with a view to resolving their disputes.*

CASE No. 3116

DEFINITIVE REPORT

**Complaint against the Government of Chile
presented by
the Association of Central Metropolitan Health
Service Directorate Officials (DAP)**

Allegations: The complainant organization alleges the attempted termination and subsequent arbitrary transfer of one of its leaders and the dismissal of several of its members

- 210.** The complaint is contained in a communication dated 29 October 2014 from the Association of Central Metropolitan Health Service Directorate Officials (DAP), supplemented by a further communication dated 5 January 2015.
- 211.** The Government sent its observations in a communication dated 29 July 2015.
- 212.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

- 213.** In a communication dated 29 October 2014, the complainant alleges that, on 17 March 2014, the Director of the Central Metropolitan Health Service (hereinafter "the Health Service"), a decentralized state body with devolved competencies, issued a decision ordering the early termination of the fixed-term employment ("contractual work") of the DAP's Chairperson, Dr Roberto Eduardo Sepúlveda Hermosilla, in violation of his trade union rights. The complainant states that the aforementioned decision was rejected by the Office of the Comptroller-General in a letter dated 12 August 2014 on the grounds that the union leader enjoyed trade union immunity under section 25 of Act No. 19296 on associations of public administration officials. It also alleges that the union leader lodged an appeal for protection of his rights with the Santiago Court of Appeal, which, on 14 July 2014, unanimously granted the appeal, stating that: "... the Central Metropolitan Central Health Service [had] not denied that it had sought to terminate the contract. This can only be viewed as an illegal and arbitrary threat against [the union leader] since his dismissal would constitute a violation of the trade union immunity that he enjoyed in his capacity as president of the trade union that he heads". The complainant emphasizes that this ruling ordered the respondent to cease its threats concerning the appellant's employment.

- 214.** The complainant alleges that, on 24 March 2014, the Health Service’s Director issued another decision, transferring the union leader without seeking his consent in violation of Act No. 19296 and in a clear attempt to undermine and denigrate him. It also states that, as at the date of this complaint, the union leader had been unable to fulfil his professional duties because he had not been assigned to a unit or office. The complainant further states that the Health Service ordered the payment of several allowances to the union leader – amounting to almost 50 per cent of his monthly income – to be discontinued as from April 2014 in violation of the law under which he had been hired. The complainant considers that this action was only taken because he was the leader of an association of officials that did not serve the interests of the Health Service authorities or the government coalition and that it constitutes clear evidence of an anti-union practice.
- 215.** The complainant further alleges that, despite the ruling by the Santiago Court of Appeal, the Health Service’s Director has continued systematically to harass and intimidate a number of members of the Service’s professional staff simply because they are members of the DAP. For example, he ordered the arbitrary dismissal of 18 other officials, all of whom were members of the Association. According to the complainant, there are no technical grounds for these dismissals. Both the Santiago Court of Appeal and the Supreme Court have upheld this interpretation in numerous rulings, ordering the officials in question to be reinstated immediately with their remuneration paid in full with effect from the date of their dismissal. In its communication dated 5 January 2015, the complainant states that more than 30 appeals against repeated anti-union practices, including arbitrary, illegal and discriminatory dismissals of its members by the Health Service, have been brought before the courts and that the Supreme Court has issued judgments granting 22 of the 30 appeals lodged.
- 216.** Lastly, the complainant alleges that a similar situation has arisen in the Regional Ministerial Public Health Secretariat for the metropolitan region and in the Carmen de Maipú metropolitan hospital, where 22 and 86 members of the professional staff, respectively, all of them members of the relevant associations of officials, have been “selectively” dismissed.

B. The Government’s reply

- 217.** In its communication of 29 July 2015, the Government transmitted the Health Service’s observations to the effect that:
- (i) The decision of 17 March 2014, terminating Dr Sepúlveda’s fixed-term contract, is moot since he was reinstated in a new establishment (the San José de Chuchunco family health centre) through Decision No. 481 of 24 March 2014.
 - (ii) The Health Service denies having harassed the union leader and notes that, in examining his appeal, the Santiago Appeals Court granted it without confirming the specific acts of workplace harassment that he had alleged.
 - (iii) The trade union immunity enjoyed by the union leader was not affected by Decision No. 481/2014, which was ruled compliant with both administrative and judicial law because Dr Sepúlveda was contracted to work in the Health Service’s health-care network, which includes various health-care centres.
 - (iv) The reduction in the union leader’s remuneration is legal because there are two types of allowances: permanent and temporary. The latter include “responsibility” and “incentive” allowances, to which only a director of service is entitled under current regulations. Thus, given that the claimant had ceased to perform managerial functions, the Director decided to withdraw the transitional allowances while maintaining those of a permanent nature.

- (v) The dismissals of the other officials were carried out in accordance with existing legislation since, in the cases involving early termination of contracts, the initial contract authorized such termination where required by the needs of the service. These dismissals thus respect the principle of legality. In that connection, the Health Service has provided a corrected list of the dismissals challenged in the courts, showing the number of appeals granted to be 13 out of a total of 35. Thus, the Government maintains that the Health Service fully complied with the courts' rulings.
- (vi) Concerning the situation described by the claimant, who maintains that he had no unit or office in which to carry out his professional duties, Dr Sepúlveda never reported for work at the San José de Chuchunco family health centre. However, this issue has apparently been settled since the claimant was employed by the Calera de Tango Directorate from 1 January to 31 December 2015. For this reason, he reportedly withdrew the appeal that he had lodged with the Second Labour Court of Santiago.

218. The Government goes on to provide its own observations, claiming that the information supplied by the Health Service shows that there has been no violation of freedom of association, without prejudice to the errors and differences in the parties' interpretation of the facts that have been settled through existing Chilean institutional procedures. The Government explains that the law (section 25 of Act No. 19296 on associations of public administration officials) recognizes the rights of officials appointed as union leaders and the resulting immunity. It points out, however, that, under Act No. 18575 (the Organization Act establishing the General Principles for State Administration), heads of service are responsible for directing, organizing and administering their services, without prejudice to the organization's right to assign its staff as it sees fit in order to ensure the proper functioning of the entity in its charge. Thus, the change in functions arising from the above measures does not affect trade union immunity. Lastly, the Government points out that Dr Sepúlveda's case involves a single transfer – not frequent transfers – which would be in line with the Committee on Freedom of Association's position as expressed in its *Digest of decisions and principles*.

C. The Committee's conclusions

- 219.** *The Committee observes that in the present case, the complainant alleges the attempted termination and subsequent arbitrary transfer of the Chairperson of the Association of Central Metropolitan Health Service Directorate Officials (DAP), Dr Roberto Eduardo Sepúlveda Hermosilla, and the dismissal of several of the Association's members.*
- 220.** *With regard to the status of the union leader, the Committee notes that Dr Sepúlveda was employed by the Health Service under a fixed-term contract ending on 31 December 2014 and that the Health Service's management decided to dismiss him prior to its expiration through a decision dated 17 March 2014. The Committee notes that this decision is now moot and that management decided to transfer him without seeking his consent through another decision of 24 March 2014, which, in his view, amounts to a form of discrimination owing to his role as a union leader.*
- 221.** *The Committee observes that the union leader challenged the decision to terminate his contract prior to its expiration before two bodies, namely the Santiago Court of Appeal and the Office of the Comptroller-General, which issued rulings on 14 July and 12 August 2014, respectively. The Committee notes that the two rulings are based on the trade union immunity enjoyed by the union leader pursuant to Act No. 19296 on associations of public administration officials. The Committee notes in this regard that it is clear from the judgment issued by the Court of Appeal that the dismissal did not take place and that the issue is rather a threat of contract termination: "the attempt to terminate the fixed-term contract of the protected person ... can only be viewed as an illegal and arbitrary threat against him since*

his dismissal would constitute a violation of the trade union immunity that he enjoyed in his capacity as Chairperson of the trade union that he heads”.

- 222.** *In response to the allegation that the decision to transfer the trade union leader was of anti-union nature, the Committee notes the Government’s indications and the judgments attached to the Government’s communication, issued by the Santiago Court of Appeal (on 22 May 2014) and the Office of the Comptroller-General (on 5 November 2014), respectively, according to which the trade union immunity enjoyed by the union leader was not affected by Decision No. 481/2014 regarding the transfer because Dr Sepúlveda was contracted to work in the Health Service’s health-care network, which includes various health-care centres.*
- 223.** *Notwithstanding the foregoing, the Committee notes that the decision to transfer the union leader was taken a few days after the decision to dismiss him and although it was a single transfer, the Committee cannot rule out, in the light of the information in its possession, the possibility that the transfer decision was not related to Dr Sepúlveda’s trade union functions. The Committee notes, in particular, that his transfer resulted in less favourable conditions of service and a significant loss of income. The Committee recalls, in this respect, that “[o]ne of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers’ organizations shall have the right to elect their representatives in full freedom [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 799].*
- 224.** *On the other hand, the Committee notes the Government’s assertion that the claimant, Dr Sepúlveda, never reported for work at the San José de Chuchunco family health centre and that he withdrew the appeal that he had lodged with the Santiago Labour Court. The Committee further notes that he was offered another contract after 31 December 2014, in the Calera de Tango Health Directorate. Noting that Dr Sepúlveda’s contractual status has been resolved subsequent to the termination of his initial contract, the Committee trusts that the Government will ensure that, in the future, health workers enjoy adequate protection against anti-union discrimination in respect of their employment.*
- 225.** *With regard to the alleged dismissal of several members of the Association in order to weaken its membership, the Committee notes that the allegations also concern the early termination of fixed-term contracts (more than 18 according to the complainant, a figure that the Government revises downward in its reply). Although not all of the relevant rulings have been provided, the Committee notes the significant number of court judgments relating to a series of Health Service decisions terminating contracts prior to their expiration over the same period of time on the grounds that the services of the persons concerned were not needed. The Committee observes that the relevant court judgments do not touch upon trade union considerations, but rather upon the attention given to the criterion of the needs of the service, indicating in general terms that early termination of the employment relationship is only possible where the initial contract makes explicit mention of those needs. The Committee notes that, under this criterion, the courts ordered the reinstatement of the workers concerned. On the other hand, the Committee observes that it lacks the information needed to determine whether the Health Service sought early termination of the contracts of other workers who were not DAP members, and thus whether the dismissals were anti-union in nature. Under the circumstances, and recalling the importance of fully respecting the*

principles of freedom of association, and in particular of ensuring that workers in the sector enjoy adequate protection against acts of anti-union discrimination when implementing human resources policy in the country's health services, the Committee will not pursue its examination of this aspect of the case.

The Committee's recommendation

226. *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. 3198

DEFINITIVE REPORT

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

Allegations: The complainant alleges that the Government has refused to bargain with the National Association of Chilean Civil Registry and Identification Service Officials and has threatened and retaliated against them (through penalties and dismissals) for holding a legal strike during which workers were replaced

227. The complaint is contained in a communication from the National Association of Public Servants (ANEF) received on 3 December 2015.

228. The Government sent its observations in a communication dated 10 January 2017.

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

A. The complainant's allegations

230. In its communication of 3 December 2015, ANEF, which comprises all associations of Chilean public servants, maintains that the Government has refused to bargain with the National Association of Chilean Civil Registry and Identification Service Officials (ANERCICH) and has threatened and retaliated against its members (through penalties and dismissals) for holding a legal strike during which workers were replaced.

231. ANEF states that article 19(16)(5) of the Constitution prohibits public servants from striking and that the Government has never had any intention of amending this provision. The complainant also reports that while no legislation expressly authorizes bargaining in the public administration, in practice negotiations have been conducted over the past 20 years with the acquiescence of the then Governments.

232. According to ANEF, in view of the Government's refusal to negotiate various improvements in working conditions with ANERCICH, the staff of the Civil Registry and Identification Service (SRCI) called a strike on 29 September 2015, after which the public authorities made statements in the media in an effort to undermine the strike. Specifically, ANEF alleges that: (i) on 22 October 2015, the Deputy Secretary of the Interior publicly declared that the Government was prepared to invoke the State Internal Security Act (Act No. 12927) in respect of the SRCI officials (ANEF stresses that this Act is to be applied only in the event of an act that amounts to terrorism or creates chaos within the country); (ii) the Minister of Finance and the Minister of Labour told the media that the strike was unconstitutional and unlawful (claiming that the Service must not cease to function, which, according to the complainant, never occurred since minimum public services in priority areas were provided); (iii) opposition members of Congress also criticized the strike and filed an application for protection requesting that the strike be declared unlawful; the appeals court rejected the application on the grounds that it lay outside the court's jurisdiction; and (iv) the Court of Audit (the body that reviews legality and monitors the fulfilment of obligations by the authorities and public servants) instructed the Director of the SRCI to impose penalties on those involved in the strike; this resulted in over 100 cases of disciplinary proceedings, as well as dismissals.

233. The complainant also states that the Government replaced the striking employees by importing public servants from the country's other departments and administrations, who had no experience in carrying out important tasks such as the celebration of marriages. ANEF reports that in light of this situation, ANERCICH filed an application for protection on 22 October 2015 in an effort to prevent the replacement of public servants (Case No. 92045-2015), but the Santiago appeals court rejected the application on the grounds that it lay outside the court's jurisdiction. The complainant emphasizes that, owing to the legal and social importance of its work, ANERCICH continued to provide minimum services during the strike in order to meet urgent needs.

B. The Government's reply

234. In its communication of 10 January 2017, the Government states that while it has undertaken to institutionalize collective bargaining in the public sector and to regulate exercise of the right to strike by public servants, it has been unable to reach agreement with the Public Sector Board or to gain its support for this initiative because the unions have given priority to progress on other items on the joint agenda set out in the Memorandum of Understanding of November 2014. The Government emphasizes that it has invited the unions to attend meetings of the Senate Committee on Labour and Social Welfare in order to give their views on the draft constitutional reform legislation, which would lift the prohibition of strikes, and that the unions have maintained that there was no need to regulate strikes.

235. The Government indicates that the SRCI is a decentralized public service that is overseen by the Office of the President of the Republic through the Ministry of Justice. Its primary purpose is to keep records and vital statistics on marital status and identity. The Government states that it has a variety of functions, many of which are extremely important to the public, and that failure to perform them can have serious and permanent consequences. For example, birth registration is a procedure that facilitates and authorizes newborns' access to health services; the death registry is an essential procedure that authorizes burial or cremation of the dead; the granting and renewal of identity cards and passports allows individuals to conduct their personal business with public and private entities since they cannot prove their identity until the documents are issued and their absence causes serious problems; failure to maintain the motor vehicle registry has an impact on anyone who acquires, sells or purchases a vehicle, and particularly on those who work with or sell them; delays in recording convictions for domestic violence and other serious offences may do irreparable harm to the victims; and delays in updating criminal records may also do irreparable harm to individuals.

- 236.** The Government states that from 29 September to 6 November 2015, a work stoppage by SRCI employees had a serious impact on the continuity of the Service's activities and on access to the services that it provides. In light of that situation, management took emergency measures in order to offer as many essential services as possible using staff not involved in the work stoppage or seconded from other departments.
- 237.** The Government explains that since the SRCI is a State agency, article 3 of the Public Administration Constitutional Organization Act (Act No. 18575), which establishes that it "serves the general public; its purpose is to promote the greater good by meeting the needs of the public on a continuing, permanent basis and furthering the country's development by carrying out its responsibilities under the Constitution and the law", is applicable. Moreover, the SRCI is monitored by the Court of Audit, which has stated that the Government must exercise its authority and order the modification or restructuring of the Service or the allocation of its staff in order to ensure that it is properly managed in pursuit of the common good – in other words, in order to meet its objectives and ensure accountability pursuant to Act No. 18575.
- 238.** The Government emphasizes that no disciplinary measures have been taken within the SRCI, the striking workers were not penalized and the withholding of wages does not constitute a penalty; it was carried out in accordance with the legislation currently in force, the principles established by the Court of Audit and the judgments of the courts. The Government mentions article 72 of Ministry of Finance Legislative Decree No. 29 (2004), approving the amended and harmonized text of the Administrative Statute (Act No. 18834), which reads: "Wages shall not be paid for hours not actually worked except in the case of holidays, paid leave as provided in this Statute, preventive suspension pursuant to Article 136, unforeseen circumstances or situations of force majeure" The Government also stresses that the Court of Audit, in its administrative case law, has repeatedly established that public servants' right to freedom of expression must be exercised in accordance with statutory law and, in particular, has confirmed the legality and legitimacy of not paying wages for hours not worked owing to work stoppages and staff mobilizations.
- 239.** The Government states that ANERCICH filed with the Santiago appeals court an application requesting prohibition of the withholding of wages by the Service management, but the appeal was rejected by the second chamber of the court at its summer session (Case No. 102.022-2015) on 15 February 2016; this decision was upheld by the third chamber of the Supreme Court (Case No. 16.566-2017) on 17 May 2016.
- 240.** With regard to the alleged invocation of the State Internal Security Act (Act No. 12927), according to the Government, article 26 of the Act provides that proceedings concerning the offences established therein shall be opened at the request of or upon receipt of a complaint from the Ministry of the Interior and Public Safety or from the relevant mayor and that none of these public authorities has invoked the Act in respect of the events that gave rise to the present complaint.
- 241.** With respect to the application for protection filed by three members of Congress, requesting that the strike be declared unlawful, this does not constitute a breach of the Chilean Government's obligations under Conventions Nos 87 and 98, but rather the exercise of judicial protection of the rights of citizens through a procedure aimed specifically at reconciling competing rights, such as the right to strike under circumstances that would affect the provision of essential services. The Government indicates that the Court did not declare the work stoppage by the SRCI staff unlawful.

242. Lastly, the Government states that the negotiations that led to the strike culminated in an agreement between the authorities and ANERCICH whereby SRCI staff and contractual workers would receive a performance and productivity bonus; this commitment was met through the adoption of Act No. 20934, published in the *Official Gazette* of 9 July 2016.

C. The Committee's conclusions

243. *The Committee observes that in the present case, ANEF, which comprises all associations of Chilean public servants, maintains that the Government has refused to bargain with ANERCICH and has threatened and retaliated against its members (through penalties and dismissals) for holding a legal strike from 29 September to 6 November 2016, during which workers were replaced.*

244. *The Committee takes note of the complainant's statement that article 19(16)(5) of the Constitution prohibits public servants from striking and that the Government has never had any intention of amending this provision. The complainant also states that while no legislation expressly authorizes bargaining in the public administration, in practice negotiations have been conducted over the past 20 years with the acquiescence of the then Governments. On this issue, the Committee also takes note of the Government's statement that while it has undertaken to institutionalize collective bargaining in the public sector and to regulate exercise of the right to strike by public servants, it has been unable to reach agreement with the Public Sector Board or to gain its support for this initiative because the unions have given priority to progress on other items on the joint agenda set out in the Memorandum of Understanding of November 2014. The Committee further notes that, according to the Government, it has invited the unions to attend meetings of the Senate Committee on Labour and Social Welfare in order to give their views on the draft constitutional reform legislation, which would lift the prohibition of strikes, and that the unions have maintained that there was no need to regulate strikes.*

245. *The Committee takes note of the complainant's allegation that: (i) in view of the Government's refusal to negotiate various improvements in working conditions (on the pretext that the law did not require it to negotiate), the staff of the SRCI called a strike on 29 September 2015; (ii) three opposition members of Congress filed an application for protection requesting that the strike be declared unlawful but the appeals court rejected the application on the grounds that it lay outside the court's jurisdiction; (iii) owing to the legal and social importance of its work, ANERCICH continued to provide minimum services during the strike in order to meet urgent needs; and (iv) notwithstanding the foregoing, the Government replaced the striking SRCI employees by importing public servants from the country's other departments and administrations, who had no experience in carrying out important tasks such as the celebration of marriages, and that, in light of this situation, ANERCICH filed an application for protection which was rejected by the Santiago appeals court on the grounds that it lay outside the court's jurisdiction.*

246. *The Committee takes note of the Government's statement that: (i) the SRCI is a public service and its primary purpose is to keep records and vital statistics on marital status and identity (for example, birth registration is a procedure that authorizes newborns' access to health services and the death registry is an essential procedure that authorizes burial or cremation of the dead); (ii) the strike took place from 29 September to 6 November 2015 and as it had a serious impact on access to the services that the SRCI provides, the Service's management took emergency measures in order to offer as many essential services as possible using staff not involved in the work stoppage or seconded from other departments; and (iii) since the SRCI is a State agency, article 3 of the Public Administration Constitutional Organization Act (Act No. 18575), which establishes that it "serves the general public; its purpose is to promote the greater good by meeting the needs of the public on a continuing, permanent*

basis and furthering the country's development by carrying out its responsibilities under the Constitution and the law", is applicable.

- 247.** *With regard to the issues that led to the strike, the Committee notes that the strike culminated in an agreement between the authorities and ANERCICH whereby SRCI staff and contractual workers would receive a performance and productivity bonus; this commitment was met through the adoption of Act No. 20934, published in the Official Gazette of 9 July 2016. The Committee welcomes this agreement between the SRCI management and ANERCICH and the adoption of Act No. 20934, through which the dispute that resulted in the strike and in the present complaint is said to have been resolved.*
- 248.** *With regard to the allegation that the Deputy Secretary of the Interior mentioned the possibility of invoking the State Internal Security Act (Act No. 12927) in respect of SRCI officials (the complainant stresses that this Act is to be applied only in the event of an act that amounts to terrorism or creates chaos within the country), the Committee takes note of the Government's statement that article 26 of the Act provides that proceedings arising from the offences established therein shall be opened at the request of, or upon receipt of a complaint from, the Ministry of the Interior and Public Safety or the relevant mayor and that none of these public authorities have invoked the Act in respect of the events that led to the present complaint. While noting the Government's statement that the public authorities have not opened any criminal proceedings on the basis of Act No. 12927, the Committee recalls that nobody should be deprived of his liberty or subjected to penal sanctions for the mere fact of organizing or participating in a peaceful strike [see **Digest**, op. cit., para. 672].*
- 249.** *Lastly, with regard to the allegation that the Court of Audit (the body that reviews legality and monitors the fulfilment of obligations by the authorities and public servants) instructed the Director of the SRCI to impose penalties on those involved in the strike and that this resulted in over 100 cases of disciplinary proceedings, as well as dismissals, the Committee notes that, according to the Government: (i) no disciplinary measures have been taken within the SRCI and the striking workers were not penalized; (ii) the withholding of wages does not constitute a penalty; it was carried out in accordance with the legislation currently in force, the principles established by the Court of Audit and the judgments of the courts; and (iii) the application for protection that ANERCICH filed with the Santiago appeals court in respect of the withholding of wages by the Service's management was rejected by the second chamber of the court at its summer session, on 15 February 2016, and this decision was upheld by the third chamber of the Supreme Court on 17 May 2016. Under the circumstances, and noting that the complainant has provided no information on the number and names of the workers who were allegedly dismissed or otherwise penalized, the Committee will not pursue its examination of these allegations.*

The Committee's recommendation

- 250.** *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. 3131

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

**Complaint against the Government of Colombia
presented by**

- **the Confederation of Colombian Workers (CTC) and**
- **the Workers’ Trade Union of Colombia Coal Company (SINTRACOAL)**

*Allegations: The complainant organizations
allege anti-union behaviour by a coalmining
company and lack of proper protection from the
labour inspectorate*

- 251.** The complaint is contained in communications dated 9 and 14 April 2015 from the Confederation of Colombian Workers (CTC) and the Workers’ Trade Union of Colombia Coal Company (SINTRACOAL).
- 252.** The Government sent its observations in a communication dated 30 November 2015.
- 253.** 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 complainants’ allegations

- 254.** The complainants state that SINTRACOAL is a first-level trade union organization founded on 24 June 2013, with 135 affiliated members among the 450 workers employed by Colombia Coal Company (“the mining company”), which is a coalmining concern.
- 255.** The complainants state as a matter of complaint that, since the union’s foundation, the employer has shown systematic anti-union behaviour which they have brought to the attention of the competent authorities through two administrative complaints and one urgent request for assistance. However, the authorities have failed to honour their legal obligation to investigate and sanction the mining company. The complainants affirm that SINTRACOAL: (i) sent an urgent request for assistance on 10 March 2014 to the Deputy Minister for Labour Relations, claiming anti-union discrimination against union members and leaders in the form of degradation of working conditions, disciplinary sanctions, refusal to deduct contributions, failure to comply with the collective agreement, and the employer’s refusal to pay salary on grounds of participation in union information meetings. According to the complainants, that request has never been considered; (ii) on 13 March 2014, submitted an initial administrative complaint denouncing redundancies, anti-union acts, systematic persecution, harassment and undermining of union leaders, and refusal by the mining company to deduct union contributions for all workers as a standard benefit; and (iii) on 25 March 2015, submitted a second administrative complaint denouncing failure to comply with the collective agreement, non-observance of industrial safety rules, and disciplinary sanctions against union leaders and members. The union mentions in particular the situations of the following persons who were each punished with an eight-day suspension: (1) Mr Julio César Cortés Guegue, trade union officer at SINTRACOAL, whose punishment for showing lack of respect to a line manager was revoked on 25 January 2014 by Municipal Court No. 49 on grounds of violations of due process, with the mining company ordered to pay the salary it had declined to pay during the punishment;

(2) Mr Serafín Balguera Santos, vice-president of SINTRACOAL, punished on 17 October 2014 for arriving at work with a blood alcohol level of 0.026 per cent and who is now awaiting the court's decision for protection of constitutional rights; and (3) Mr Miguel Ángel Pinilla Gómez, punished on 11 September 2014 for having spoken to a media outlet about irregularities at the mining company.

- 256.** The complainants also state that, in response to various anti-union acts by the mining company, SINTRACOAL decided to hold eight days of protests at the coalmines in July 2014, and that: (i) the protests were short-term and peaceful; (ii) its actions enabled SINTRACOAL to make initial approaches, through the president of the CTC, to the mining company's management to set up a panel for negotiation and dialogue with the workers; (iii) the dialogue settled the labour dispute; and (iv) the management of the mining company made an oral commitment not to take any action in reprisal for the protests.
- 257.** The complainants allege that, in violation of what had been agreed at the negotiating table, the mining company took three reprisal measures aimed at silencing the union: (i) it initiated "special proceedings to define as suspension or strike", heard in the first instance by the Higher Court of Cundinamarca, which ruled that the standstill caused by the protests was unlawful. The union appealed against those proceedings, questioning the judiciary for having failed to take due account of the testimony of the CTC president or the background to the case; (ii) it filed criminal complaints against the leadership of SINTRACOAL for its participation in the workers' protests; and (iii) it submitted an application to the Ministry of Labour for temporary suspension of work at certain coalmines, seeking thereby to suspend the employment contracts of 228 workers. The complainants allege that the mines affected by the closure application were those where membership of SINTRACOAL was highest, which showed a disregard for union members.
- 258.** The complainants also state that: (i) faced with this situation, SINTRACOAL decided to bring the labour dispute before the Committee for the Settlement of Disputes before the ILO (CETCOIT); (ii) the mining company showed no desire for conciliation and the union rejected a proposal by the company that the union withdraw its two administrative complaints in exchange for the company withdrawing its criminal complaints, while the company's proceedings in the labour courts to have the strike declared unlawful would continue; and (iii) the offer was rejected.
- 259.** The complainants state that the union held a peaceful march in Bogotá to protest against: (i) increasing threats by the mining company arising from its application to close coalmines temporarily; (ii) the apathy of the Ministry of Labour, specifically the Labour Inspector in Ubaté; and (iii) the persistent anti-union behaviour of the mining company's management. The march, authorized by the Government Secretariat, ended at the premises of the Ministry of Labour, where the complainants state that the union leaders were met by the Deputy Minister for Labour Relations, who undertook to ascertain the reasons for the delays to the complaints submitted by the union, and it was agreed to submit a fresh administrative complaint to the labour inspectorate in Ubaté (Cundinamarca).
- 260.** The complainants assert, finally, that: (i) the labour authority did not act equitably in failing to address in a timely and effective manner a systematic attack by the mining company against the union, despite various requests for assistance made by SINTRACOAL; and (ii) likewise, the judicial authorities have disregarded their claims, whereas the proceedings initiated by the mining company have already been processed by the courts.

B. The Government's reply

- 261.** In a communication dated 30 November 2015, the Government communicated its observations and those of the mining company. The company states that, contrary to the

statements by the union: (i) the company has no plant to cook coal in the town of Ubaté (Cundinamarca); (ii) the actual number of union members is less than the number stated by the complainants, while the number of workers contracted to the company is greater; and (iii) the commitments supposedly undertaken at the negotiating table as a result of the protests, as referred to by the union in its complaint, did not take place.

262. Concerning the union's complaints of its alleged anti-union activities, the mining company states that: (i) it has never carried out anti-union acts; (ii) it has complied strictly with its commitments under the collective agreement signed on 25 October 2013; (iii) the union in fact submitted complaints to the labour inspectorate of which the mining company was informed; (iv) the mining company has always appeared before the competent authorities when requested; and (v) deductions of union contributions have been implemented in accordance with the law.

263. Concerning the protests mentioned in the complaint, the mining company states that: (i) it understands the complainants to be referring to the stoppage that SINTRACOAL organized in July 2014 which was declared unlawful by the judicial authorities; (ii) the protests were not short-lived and peaceful, rather the company's operations were halted completely by unionized and non-unionized workers, to such an extent that the entrance gates to the mines in the towns of Guachetá and Cucunbá were chained up, preventing those who wished to do so from working; (iii) the protests lasted 14 days, and not eight as stated by the complainant organizations; (iv) as a consequence of the blockade of operations, the mining company sustained an income loss of 196,122,164 Colombian pesos, which added to the losses it had been suffering since 2012; (v) SINTRACOAL is a minority union and, under the provisions of article 444 of the Substantive Labour Code (CST) it should have obtained, prior to the blockade of operations, a majority vote in favour from the mining company's workers; (vi) SINTRACOAL blocked access to the mining company hastily, without calling on the Labour Ministry to verify voting held among the union's members to decide whether to declare a strike; and (vii) the union warned from the start of the protest that it would not be responsible for any damage caused to machinery, since the stoppage being sought was total.

264. The mining company also states that: (i) the application to halt some coalmines temporarily was made solely for economic reasons and the Ministry of Labour, by Resolution No. 1042 of 11 June 2015, rejected it, a decision against which the mining company has since appealed; (ii) it has appeared three times before the CETCOIT to propose settlement formulas including the withdrawal of criminal complaints, of the application for the complete stoppage of activities and of the application for partial suspension of activities, but the union did not put on the table any options for stopping the actions already under way; (iii) the company has no knowledge of the peaceful march in Bogotá mentioned by the complainants; (iv) the Ministry of Labour and the Colombian justice system have found that SINTRACOAL is making unfounded claims, that its representatives are behaving improperly, that its president has no respect for its leaders and vice-president, who was the subject of disciplinary proceedings after giving positive breathalyser readings; and (v) both the judiciary and the Executive, through the Ministry of Labour, have acted promptly in settling the complaints relating to this case, as demonstrated by the first instance judgments concerning both the unlawful nature of the shutdown of operations and the application for temporary closure submitted to the Ministry of Labour.

265. The Government emphasizes that the Ministry of Labour has duly addressed the various applications and actions initiated by SINTRACOAL. In this regard the Government states specifically that: (i) the first administrative complaint filed on 15 April 2014 concerning alleged anti-union persecution gave rise to a process of sanctions for which the statement of objections is still being drafted; (ii) the second administrative complaint filed on 26 March 2015 concerning alleged anti-union persecution is still at the preliminary investigation stage; and (iii) concerning the application for temporary suspension of operations presented by the

mining company, a written record exists which documents the opportunity offered to the union to state its positions freely and voluntarily.

266. Concerning the protests which triggered the finding of unlawfulness in respect of the suspension or strike promoted by SINTRACOAL, the Government underscores that: (i) the right to strike is enshrined in article 25 of the Constitution of Colombia; (ii) the right to strike is not absolute, and is subject to such regulation as the legislature may impose; (iii) under the current legislation, striking in Colombia may take place in the framework of a collective dispute of an economic nature (CST, article 429) or in the form of a stoppage declared because of the employer's failure to meet labour obligations (CST, article 379); (iv) regarding the second procedure, for a collective suspension of activities to be regarded as lawful, the employer must have behaved in a manner manifestly contrary to its obligations and which affects the normal pattern of relations with its workers (Labour Division of the Supreme Court of Justice, Judgment No. 40428 of 3 July 2009); (v) since the adoption of Law No. 1210 of 2008, judgment of the unlawfulness of strikes has been the responsibility of the higher courts (labour division) of first instance and, in the second instance, of the Supreme Court of Justice; and (vi) in the specific case of the present complaint, the cessation of activities was declared unlawful in the first instance and the second instance judgment is pending.

C. The Committee's conclusions

267. *The Committee observes that the present case refers, on one hand, to a complaint alleging a series of anti-union acts against SINTRACOAL by a mining company, in respect of which the Ministry of Labour failed to provide proper protection and, on the other, to allegations of reprisals taken by the company in response to a strike held by the union.*
268. *Concerning the complaint about a series of anti-union acts against which the public authorities are alleged not to have provided adequate protection, the Committee notes the complainants' allegation that, faced with systematic harassment including disciplinary sanctions against leaders and members, the mining company's refusal to deduct union contributions and its failure to comply with the collective agreement, they submitted an urgent request for assistance to the Ministry of Labour and an administrative complaint in March 2014, and then a second administrative complaint in March 2015, all to no avail. In this context, the Committee notes that the complainants refer specifically to the disciplinary sanctions (suspensions) imposed on the union's leaders, Mr Julio César Cortés Guegue and Mr Serafín Balguera Santos, and its member, Mr Miguel Ángel Pinilla Gómez.*
269. *The Committee also notes that the mining company denies having committed anti-union acts and states that: (i) it has complied fully with the collective agreement signed in October 2013; (ii) it deducted union contributions in accordance with the law; and (iii) it always appeared before the competent authorities when requested. The Committee also notes the Government's statement that, for the first administrative complaint, the statement of objections is still being drafted, while the second complaint is at the preliminary investigation stage.*
270. *Concerning the alleged inefficiency of the Ministry of Labour in considering the two administrative complaints submitted by SINTRACOAL, the Committee notes that, three and two years, respectively, after their submission, it still has no information concerning any decision taken by the labour administration. In this context, the Committee recalls that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 835]. The Committee further recalls that, in the framework of several cases*

considered recently [see 381st Report, March 2017, Case No. 3061, paras 306 and 307, 374th Report, March 2015, Case No. 2946, para. 251 and Case No. 2960, para. 267], it urged the Government to take the necessary action to expedite the processing of administrative complaints relating to claims of violation of trade union rights. The Committee reiterates that request in respect of the two complaints lodged by SINTRACOAL and also requests the Government to inform it of their outcome. The Committee requests the Government additionally to inform it of the outcome of the judicial proceedings relating to the disciplinary sanction imposed on Mr Serafín Balguera Santos.

- 271.** *The Committee notes the second allegation of the complainant organizations, concerning a series of reprisal measures taken by the employer following protests held at the mines in July 2014, including an application for the temporary closure of certain mines, criminal complaints against the union leadership and an application for the strike to be declared unlawful. With respect to the application for temporary closure of operations at certain mines, the Committee notes the allegation by the complainant organizations that the mines affected by such closure were those with largest union membership. The Committee notes also the Government's reply stating that it visited the mines concerned, and the mining company's reply stating that the Ministry of Labour denied its application for temporary closure, a decision against which it has appealed; accordingly, the Committee requests the Government to inform it of the final decision. Likewise, the Committee requests the Government and the complainant organizations to keep it informed of the consideration of the criminal complaints brought by the mining company against several managers of SINTRACOAL.*
- 272.** *Concerning the finding of unlawfulness regarding the strike held by SINTRACOAL in July 2014, the Committee notes that the Higher Court of Cundinamarca, in the first instance, declared the suspension of activities unlawful and that, on the basis of the information publicly available, the Appellate Court for Labour of the Supreme Court of Justice, in a judgment of 27 January 2016, confirmed this ruling.*
- 273.** *Finally, the Committee observes that the facts of the present complaint have led to a mediation process before the CETCOIT, without agreement being reached between the parties. Duly noting this attempt, the Committee requests the Government to use all available means to support the mining company and the complainant organizations in improving the climate of dialogue and mutual respect and invites them to take best advantage of the opportunities for dialogue that exist at the national level.*

The Committee's recommendations

- 274.** *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 take the necessary action to expedite the processing of the two administrative complaints lodged by SINTRACOAL and requests that it be kept informed of their outcome.*
 - (b) The Committee requests the Government to keep it informed of the outcome of the judicial proceedings concerning the disciplinary sanction imposed on Mr Serafín Balguera Santos.*
 - (c) The Committee requests the Government to inform it of the final decision concerning the mining company's request for temporary closure of a number of mines.*

- (d) *The Committee requests the Government and the complainants to keep it informed of the consideration of the criminal complaints made against the union leadership.*
- (e) *The Committee requests the Government to use all available means to support the mining company and the complainants in improving the climate for dialogue and mutual respect, and invites them to take best advantage of the opportunities for dialogue that exist at the national level.*

CASE NO. 3162

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

**Complaint against the Government of Costa Rica
presented by
the Costa Rican Confederation of Democratic Workers (CCTD)**

Allegations: The complainant organization alleges that in compliance with a ruling by the Office of the Comptroller General of the Republic, a state-owned bank amended a provision of a collective agreement

- 275.** The complaint is contained in a communication dated 14 August 2015 from the Costa Rican Confederation of Democratic Workers (CCTD).
- 276.** The Government sent its observations in communications dated 26 September and 15 December 2016.
- 277.** Costa Rica 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

- 278.** In its communication of 14 August 2015, the CCTD states that on 30 April 2014, the National Bank of Costa Rica (the Bank) and the Labour Union of the National Bank of Costa Rica (SEBANA), signed their seventh collective bargaining agreement, applicable for a three-year period. The complainant alleges that, in compliance with a ruling issued on 16 January 2015 by the Office of the Comptroller General of the Republic (CGR), the Bank amended article 63 of the collective agreement.
- 279.** The complainant states that article 63 governs payment of an incentive bonus known as the “performance appraisal and staff incentive scheme (SEDI)”, which seeks to promote staff development and well-being. Article 63 states that the Bank’s staff are entitled to a financial incentive geared to an overall performance rating achieved for each period, and that the payment must be equivalent to 15 per cent of the net profits made by the Bank and its subsidiaries in the previous year plus any reserves and provisions additional to the regulations of the Financial Institutions Supervisory Body (SUGEF) which are posted in the

year-end accounts, but that the 15 per cent will be reduced by the taxes and contributions which the Bank is required to pay by law.

- 280.** The complainant states that, as part of an audit conducted to evaluate the Bank's performance, the CGR issued report No. DFOE-EC-IF-10-2015, annexed to the complaint, in which it concludes:

Although the collective agreement states that the Bank must allocate 15 per cent of its profits to pay for the incentive bonus, the Bank in fact incurs other costs relating directly to this payment, namely employer contributions, bonuses, the "*salario escolar*" [an additional allowance for public sector workers], the labour capitalization fund, reserve fund contributions and solidarity fund contributions, as well as those incurred under article 26 of the agreement; together these constituted an average of 82 per cent of the SEDI performance incentive payment over the period examined (2006–12). It follows that the overall cost of the incentive to the Bank should include not only the payment itself but also the additional expenses that the Bank has to meet and which increase the burden on overall operating costs and on the institution's available profits.

In the report, the CGR recommends that the Bank's governing board should "ensure that the SEDI conforms to the parameter laid down in the existing regulations, such that all associated costs are incorporated".

- 281.** According to the complainant, it is blatantly unlawful for the CGR to have instructed the Bank to pay the SEDI by treating the 15 per cent of profits as a ceiling and including in that percentage all the associated costs, namely the taxes and contributions for which the employer is responsible. The complainant emphasizes that payment made under article 63 of the collective agreement is by nature salary-related and that the inclusion of what the CGR calls associated costs (taxes and contributions payable by the Bank) greatly reduces the amount of money to be shared among entitled employees of the institution, and is thus seriously detrimental to all employees of the Bank. According to the complainant, the CGR is de facto interpreting and amending the collective agreement, which constitutes state interference that violates the principles governing all collective bargaining.
- 282.** The complainant states that the Bank lodged a rescindment appeal against the CGR's ruling, which the latter rejected. According to the complainant, this constitutes a new kind of violation of collective agreements by the State: whereas, previously, unconstitutional proceedings were instituted against the provisions of collective agreements, now an administrative body such as the CGR produces an interpretation, without being competent to do so, and amends collective agreements.
- 283.** The complainant also states that SEBANA turned to the courts in an effort to have the content of the collective agreement upheld, but that the Employment Court of the Second Judicial Circuit of San José closed the case, ruling that trade unions are not competent to use the courts of law to enforce the contents of a collective agreement and arguing that SEBANA must be granted special powers by its members allowing it to represent them in a judicial process. The complainant attached to its complaint a copy of the appeal submitted to the Higher Employment Tribunal on 13 August 2015. In that appeal, the trade union emphasized that the case is not concerned with the personal interests of the Bank's employees, but is rather a matter relating to a collective agreement signed by the trade union.

B. The Government's reply

- 284.** In its communications of 26 September and 15 December 2016, the Government transmits its observations together with a report prepared by the Bank's general management. The Government explains that the Bank is an independent public law institution owned by the State and that its organic law obliges it to carry out binding instructions from the CGR. The

Government adds that the Bank is also obliged to correct errors or actions that are harmful to the public purse and have generated additional outlay without appropriate legal justification.

- 285.** The Government indicates that the CGR, as the body which controls public finances, is responsible for examining the accounts of state institutions and public officials. In this context, the Office of the Comptroller produced the “Special audit report on performance assessment in state-owned banks: the National Bank of Costa Rica”, on 16 January 2015. In this study the CGR evaluated the soundness of the Bank’s policies and the total cost to the Bank of maintaining the SEDI it has applied since 1997.
- 286.** The report concludes that, although article 63 of the existing collective agreement states that the Bank should pay a productivity incentive equivalent to 15 per cent of consolidated profits, nevertheless over the period under review (2006–12), the amounts distributed by the Bank under the productivity incentive exceeded 30 per cent of its profits, because the Bank’s administration did not include the costs associated with the incentive, including employers’ contributions, within the 15 per cent ceiling established in the collective agreement.
- 287.** The Government states that the senior management of the Bank submitted an appeal for rescindment of the report which was rejected by the Economic Services Audit Area of the CGR’s Division for Performance Evaluation Audit. Its decision, issued on 19 February 2015, states the following:
- ... there is a regulation in the Bank’s collective agreement which indicates a percentage representing the point at which the Bank was obliged to pay the incentive and the percentage that the Bank must pay under its collective agreement, namely 15 per cent of its profits less the taxes and contributions that the Bank is required to pay by law. The aim of the provision, far from violating the collective agreement, is to have a specified percentage within the institution that effectively acts as a ceiling and not simply as a reference point. This ceiling operates only when all costs associated with total payment of the productivity incentive have been taken into account, as set out in the regulation. The fact that the administration of the Bank has been implementing an arrangement contrary to the provision in the agreement by not subtracting taxes and contributions from the distributable amount as required, thus granting a greater share of the benefits to its employees (incentives exceeding 15 per cent of net profits), does not entitle those employees to continue benefiting from the error.
- 288.** The Government states that, after the Bank’s rescindment appeal was rejected, it corrected the procedure used in paying the incentive, in accordance with instructions and recommendations issued by the CGR. A report written by the Bank’s management, which the Government encloses, argues that although the Bank, motivated by error, acted incorrectly in the past on the basis of an interpretation that differed from the wording of the collective agreement, this does not entitle the workers to perpetuate the error. According to its management, the Bank’s decision does not disregard the spirit and historical context of the agreement; on the contrary, it enables correct application of the agreement as consented to by the parties and in accordance with the law. According to the Bank’s management, the CGR at no time instructed it not to apply the provision in the agreement, but instead drew the Bank’s attention to its true scope, which in the past was not being observed.
- 289.** Lastly, the Government points out that there are currently four judicial proceedings awaiting decision in connection with the Bank’s actions relating to the ruling of the CGR.

C. The Committee's conclusions

- 290.** *The Committee observes that the present case refers to the allegation by the CCTD that, in compliance with a ruling of the CGR, the Bank amended a provision in a collective agreement signed with SEBANA.*
- 291.** *The Committee notes that the complainant and the Government state that: (i) since 1997, the Bank has implemented the performance appraisal and staff incentive scheme (SEDI), which aims to promote staff development and well-being; (ii) on 30 April 2014, the Bank and SEBANA signed their seventh collective agreement for a three-year period, article 63 of which states that: (a) the Bank's employees are entitled to a performance-related incentive geared to an overall rating achieved for each period; and (b) the bonus is equivalent to 15 per cent of the net profits made by the Bank and its subsidiaries in the previous year plus any reserves and provisions additional to the regulations of the Financial Institutions Supervisory Body (SUGEF) which are posted in the year-end accounts, but that the 15 per cent will be reduced by the taxes and contributions which the Bank is required to pay by law; (iii) on 16 January 2015, the CGR issued an audit report in which it stated that, during the period under examination (2006–12), the real cost of the SEDI to the Bank represented an average of 30 per cent of the Bank's net profits and not the 15 per cent stipulated in the collective agreement, because the costs incurred by the Bank in paying the SEDI were not included within the established ceiling; (iv) these "associated costs" to the SEDI are social charges that the Bank must pay which are inherent in every salary-related payment, examples being employer contributions, bonuses, the so-called "salario escolar" [an additional allowance for public sector workers] and the labour capitalization fund; and (v) in its report, the CGR recommended that the Bank's governing board should ensure that SEDI payment conforms to the parameter laid down in the existing regulations, so that the "associated costs" are incorporated within the maximum limit of 15 per cent stipulated in the collective agreement.*
- 292.** *The Committee also notes the allegation by the complainant that the "associated costs" referred to by the CGR in its report are charges and taxes that an employer is legally required to pay, and that it is blatantly unlawful to deduct such costs from a salary-related incentive such as that provided for in article 63 of the collective agreement. The Committee further notes that the complainant states that deduction of the "associated costs" from the incentive payment greatly reduces the amount of money available for distribution among entitled employees of the institution, and is thus seriously detrimental to all the Bank's employees. According to the complainant, whereas, in the past, the State violated collective agreements through unconstitutional actions, now, through the CGR, it is de facto interpreting and amending collective agreements.*
- 293.** *In this respect, the Committee notes the Government's statements that: (i) the Bank is an independent public law institution which must comply with the CGR's rulings; (ii) the percentage to which the Bank is committed in its collective agreement is 15 per cent of its profits less the taxes and contributions for which it is liable in law; (iii) the fact that the Bank's administration has been implementing an arrangement that contravenes the provisions of the agreement, by not subtracting taxes and contributions from the distributable amount and thus granting greater benefits to its employees (incentives exceeding 15 per cent of net profits) does not entitle those employees to continue benefiting from the error; and (iv) although, as a first resort, the Bank lodged a rescindment appeal (which was rejected by the CGR in a decision issued on 19 February 2015), the management of the Bank has stated that the CGR at no time instructed it not to apply the provision in the agreement, but instead drew the Bank's attention to its true scope, which in the past was not being observed by the Bank.*

294. *In the light of the above, the Committee observes that the present complaint concerns a conflict in the interpretation of a clause of a collective agreement that applies within a state-owned bank. The Committee notes in this regard the complainant's allegation that the CGR imposed an interpretation of the clause relating to payment of an incentive bonus known as the SEDI without having competence to do so and that, furthermore, the judicial proceeding brought by the union to challenge that interpretation was declared inadmissible by the Employment Court of the Second Judicial Circuit of San José (Case No. 15-0713-0166-LA) (the complainant has not enclosed a copy of this judgment). According to the complainant, the Court ordered the case to be closed, finding that the unions do not have competence to bring cases to trial for the purposes of enforcing the contents of a collective agreement, and that they must obtain special powers from their members before representing them in judicial proceedings. The Committee notes that the complainant has attached to its complaint a copy of an appeal submitted to the Higher Employment Tribunal on 13 August 2015, on which no ruling has yet been made. The Committee observes that in its appeal the union emphasized that the case concerns not the individual interests of Bank employees but a collective agreement signed by the union. The Committee also notes that the Government refers to the existence of four judicial proceedings relating to the Bank's actions taken in response to the ruling of the CGR, which are awaiting settlement.*
295. *In this regard, the Committee recalls paragraph 6 of the Collective Agreements Recommendation, 1951 (No. 91), which states that disputes arising from interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions. Accordingly, the Committee considers that this difference in interpretation of article 63 of the collective agreement should be resolved by the mechanisms provided for such purpose in the agreement itself, or in any event by an impartial mechanism which should be accessible to both parties signatory to the agreement, such as an independent judicial body. On the basis of the foregoing, the Committee requests the Government and the complainant to keep it informed of the outcome of the ongoing judicial proceedings.*

The Committee's recommendation

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

Emphasizing the importance of settling differences of interpretation of collective agreements by the mechanisms provided for such purpose in the agreement itself, or in any event by an impartial mechanism which should be accessible to both parties signatory to the agreement, such as an independent judicial body, the Committee requests the Government and the complainant to keep it informed of the outcome of the ongoing judicial proceedings.

CASE NO. 3117

DEFINITIVE REPORT

**Complaint against the Government of El Salvador
presented by
the Union of Water Workers (SITIAGUA)**

Allegations: Refusal to register the general executive committee of the trade union through the imposition of discretionary guidelines

- 297.** The complaint is contained in a communication dated 15 January 2015 from the Union of Water Workers (SITIAGUA).
- 298.** The Government sent its observations in communications dated 31 October 2016 and 6 March 2017.
- 299.** El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

- 300.** In its communication of 15 January 2015, SITIAGUA alleges that the competent authorities imposed discretionary guidelines not envisaged by law with regard to the registration of its executive committee, violating the right to a guarantee of trade union immunity and leaving the union with no official leadership.
- 301.** The complainant maintains that on 21 October 2014, its General Secretary submitted to the National Department of Social Organizations in the Ministry of Labour and Social Security a request for the registration of its general executive committee and the issuance of accreditation and cards to its elected officers. Although the law requires a reply within 15 working days, none was received until 35 working days had passed. In order to rectify the application, the reply requested submission of: (i) a copy of the individual identity document, passport or birth certificate of each of the elected officers; and (ii) a payslip or other recent document showing that they were currently employed.
- 302.** SITIAGUA alleges that these requirements exceed the powers of the National Department of Social Organizations because they are not envisaged by law. The complainant also indicates that these requirements were not listed on the Department's website when the request was made.
- 303.** The complainant argues that this refusal to register the executive committee violated its constitutional right to trade union immunity. It had met the criteria established by law but because it had not fulfilled a discretionary requirement set by the authorities, 125 days had passed since the election of the executive committee's members and their respective credentials had yet to be issued as at the date on which the complaint was made. Thus, the authorities' decision left the union with no official leadership and prevented it from bringing legal proceedings in defence of its members' rights.

304. In that connection, SITIAGUA states that the authorities' actions violated not only its constitutional right to trade union immunity, but also the principle of legal certainty; since 2009, it has submitted five requests for the registration of and issuance of accreditation to the members of its executive committee and the authorities have granted these requests without requesting the submission of copies of individual identity documents (or passports or birth certificates) or payslips for the elected individuals. The trade union contests this change in administrative criteria and maintains that the authorities may not arrogate to themselves powers not expressly envisaged in the Labour Code or other legislation.

B. The Government's reply

305. In its communication of 31 October 2016, the Government indicates that the security notice of 17 November 2014 contested by the complainant was not a denial of the request, but rather an invitation to rectify it by submitting the necessary documents. Thus, it cannot be considered an obstacle to trade union activity as SITIAGUA claims.

306. The Government emphasizes that rectificatory security measures (requests for copies of the passport or birth certificate of each of the elected officers and of payslips or other recent documents as proof of current employment) is grounded in national legislation and case law. As the country's Supreme Court has recognized, the registration of executive committees is not a discretionary act but a regulated function of the administration and the process entails verification that the legal requirements have been met. The Government stresses that the security measure was not discretionary or arbitrary; submission of the requested documents was necessary in order to show that the criteria established in the country's Constitution (article 47 on nationality) and Labour Code (article 225 of which requires that the applicant be a national of El Salvador, have attained the age of majority, be a member of the trade union and not be employed in a position of trust or a representative of the employer).

307. The Government maintains that the authorities are not responsible for the fact that the trade union has no official leadership since that situation could have been rectified; it is a consequence of the complainant's obstinacy despite the authorities' many attempts to facilitate rectification. In that regard, the Government states that: (i) in order to facilitate compliance, the security notice offered as an alternative the submission of documents other than the individual identity document (for example, the passport or birth certificate); (ii) on 1 October 2015, after the security notice had been sent, an effort to communicate with the founder of SITIAGUA (who signed the complaint presented to the Committee) was made with a view to dialogue aimed at rectifying the request so that the requested registration and granting of accreditation could be carried out, but there was no reply of any kind; and (iii) a final notification was sent to this trade union leader by note dated 22 April 2016, in which the General Director for Labour invited him to meet with her on 3 May 2016 in order to discuss the legal status of the executive committee of SITIAGUA and to urge the organization to submit the remaining documents so that it could receive its accreditation and cards. The elected General Secretary of the executive committee of SITIAGUA (Mr Alejandro Alvarenga Vásquez) and a lawyer representing the trade union's leader attended the meeting, during which it was explained to them that the purpose of the meeting was to share the Ministry's concern that over a year had passed since the date on which the trade union had been notified and to explain the legal reasons for the requirement. Although the union's representatives took note of this explanation, as at the date of the Government's most recent communication no other representative of SITIAGUA had contacted the authorities in order to meet the requirement. The Government requests the Committee to urge the complainant to come to the Ministry of Labour and Social Welfare in order to rectify the security measures taken so that the trade union can be registered, the members of its executive committee can be issued accreditation and its status can be legalized.

308. With respect to the alleged change in administrative practice, the Government states that while previous administrations did not verify compliance with some of the legal requirements for the registration of executive committees, this approach led to serious problems in practice, including the existence of executive committees made up of foreign nationals or of employees in positions of trust and representatives of the employer, and to legal issues regarding the identity of the officers (the names of the individuals in question were not checked against official documents because they were wrongly listed in the minutes of the assembly).

C. The Committee's conclusions

309. *The Committee observes that, in the present case, the complainant organization alleges the refusal to register the general executive committee of SITIAGUA through the imposition of discretionary guidelines by the National Department of Social Organizations in the Ministry of Labour and Social Security. The Committee also observes that, according to the Government, the contested decision did not constitute a discretionary refusal to register the executive committee, but merely a request for the necessary documentation (national identity documents and payslips) to be submitted in order to enable verification of compliance with the requirements applicable to the members of the executive committee under the Constitution of El Salvador and the Labour Code.*

310. *In this regard, the Committee wishes to recall once again that the requirements established in national law relating to the registration of executive committees must be in conformity with the principles of freedom of association, in particular the right of the workers freely to elect their representatives. The Committee takes note of the Government's statement that it required the submission of copies of individual identity documents and payslips in order to verify compliance with the legal requirements, in particular that members of executive committees should be nationals of El Salvador by birth, have attained the age of majority and not be employed in positions of trust or representatives of the employer.*

311. *The Committee recalls: (i) as to the requirement that members should be nationals of El Salvador by birth, the principle that legislation should be made flexible so as to permit the organizations to elect their leaders freely and without hindrance, and to permit foreign workers access to trade union posts, at least after a reasonable period of residence in the host country; and (ii) as to the requirement that members of an executive committee must have attained the age of majority, that its imposition constitutes a restriction of the right of the workers freely to elect their representatives (see Case No. 3136 (El Salvador), para. 326, 377th Report). Furthermore, the Committee observes that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has requested the Government to take measures to amend article 47(4) of the national Constitution, section 225 of the Labour Code and section 90 of the Civil Service Act, which establish the requirement to be "a national of El Salvador by birth" in order to hold office on the executive committee of a trade union.*

312. *In view of the fact that El Salvador has ratified Convention No. 87 and the special situation in the country, the Committee requests the Government to send detailed information to the CEACR on the measures taken to adapt the regulations on the formation and registration of executive committees in line with the principles of freedom of association, and draws the attention of the CEACR to the legislative aspects of this case.*

313. *Lastly, taking due note of the Government's statement regarding its efforts to enter into dialogue with SITIAGUA so that the trade union can rectify its request and obtain the registration of its executive committee, the Committee invites the complainant to contact the authorities in order to rectify its status in accordance with the principles of freedom of association.*

The Committee's recommendation

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

In view of the fact that El Salvador has ratified Convention No. 87 and the special situation in the country, the Committee requests the Government to send detailed information to the CEACR on the measures taken to adapt the regulations on the formation and registration of executive committees in line with the principles of freedom of association, and draws the attention of the CEACR to the legislative aspects of this case.

CASE NO. 2609

INTERIM REPORT

Complaint against the Government of Guatemala presented by

- the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG)
- the Trade Union Confederation of Guatemala (CUSG)
- the General Confederation of Workers of Guatemala (CGTG)
- the Trade Union of Workers of Guatemala (UNSITRAGUA) and
- the Movement of Rural Workers of San Marcos (MTC)

supported by

- the International Trade Union Confederation (ITUC)

Allegations: The complainants allege numerous murders and acts of violence against trade union members and flaws in the system that result in criminal and labour-related impunity

315. The Committee last examined this case at its June 2016 session, when it submitted an interim report to the Governing Body [see 378th Report, approved by the Governing Body at its 327th Session (June 2016), paras 272–325].

316. The Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) sent new allegations in a communication dated 31 January 2017.

317. The Government sent its observations in a communication dated 3 May 2017.

318. 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

319. At its June 2016 session, the Committee made the following recommendations [see 378th Report, para. 325]:

- (a) The Committee expresses once again its deep and growing concern over the seriousness of this case, given the many instances of murder, attempted murder, assaults and death threats and the climate of impunity.
- (b) The Committee firmly expects that the commitments made by the Government in the October 2013 roadmap and reaffirmed by the President of the Republic in March 2016 with regard to the conviction of perpetrators and instigators of murders of trade union members and the protection of trade union leaders and members against violence and threats will translate into actions and concrete results. The Committee urges the Government to inform it as promptly as possible of the actions taken in this regard and of the results obtained.
- (c) The Committee encourages the continuing development of collaboration between the Public Prosecutor's Office and the CICIG and stresses the importance of concerned trade union organizations being consulted when that institution is examining murder cases. The Committee requests the Government to keep it informed of the results of such collaboration in regard to the 12 murder cases selected in June 2015.
- (d) The Committee urges the Government, in accordance with the guidelines suggested by the CICIG, to take as a matter of urgency all necessary measures to ensure that the investigations under way are directed towards both the perpetrators and the instigators of the acts and that, in planning and conducting the investigations, the possible anti-union motive behind the murders be fully and systematically taken into account. The Committee urges the Government to keep it promptly informed of the initiatives taken and the results obtained.
- (e) The Committee urges the Government to take all necessary measures to ensure that additional economic and human resources are allocated to the Special Unit of the Public Prosecutor's Office for Crimes against Trade Unionists. The Committee requests the Government to inform it promptly of the initiatives taken and the results obtained in this regard.
- (f) The Committee urges the Government to continue strengthening inter-agency collaboration between the Ministry of Labour, the Ministry of the Interior, the Public Prosecutor's Office and the judiciary with regard to the murders of trade union leaders and members. The Committee requests the Government to keep it informed in this regard.
- (g) The Committee urges the Government to take all necessary measures to establish special courts in order to deal more swiftly with crimes and offences committed against members of the trade union movement. The Committee requests the Government to inform it of concrete initiatives taken in this regard.
- (h) The Committee again urges the Government to develop and implement effective protection measures for persons who agree to collaborate in criminal investigations into acts of anti-union violence. The Committee requests the Government to keep it promptly informed of initiatives taken in this regard.
- (i) The Committee requests the Government to provide further information about the reasons for its request for abatement of the criminal prosecution concerning the murder of Mr Jorge Ricardo Barrera Barco and for a stay of proceedings in the case of Mr Carlos Antonio Hernández Mendoza.
- (j) The Committee urges the Government to send as promptly as possible information concerning the relevant investigations to identify and bring to justice both the perpetrators and the instigators of the murders of Mr Jerónimo Sol Ajcote, Mr Gerardo De Jesús Carrillo Navas, Mr William Retana Carias, Mr Manuel De Jesús Ortiz Jiménez, Mr Genar Efrén Estrada Navas, Mr Edwin Giovanni De La Cruz Aguilar, Mr Luis Arnoldo López Esteban and Mr Marlon Velázquez.
- (k) The Committee once again urges the Government to carry out a full investigation of the records of the Public Prosecutor's Office in order to determine the existence of the complaint from Ms Lesvia Morales and urges the MSCIG to cooperate in good faith in the search. The Committee requests the Government and the complainant organization to keep it informed in this regard.

- (l) The Committee reiterates its request that the complainant organizations provide further information about the allegations of death threats against Ms Selfa Sandoval Carranza, SITRABI board member, and the allegations of illegal detention and intimidation of members of the SITRAPETEN in several hotels across the country. The Committee points out that, in the event of it not receiving the said information for its next examination of the case, it will not pursue its analysis of the aforementioned allegations.
- (m) The Committee once again urges the Government to institute an independent judicial inquiry into the allegations of attempted extrajudicial killings and death threats sustained by members of the Union of Commercial Workers of Coatepeque. The Committee requests the Government to keep it informed in detail about that inquiry and the resulting criminal proceedings.
- (n) The Committee once again urges the Government to inform it of the actions taken to determine the whereabouts of Maria Antonia Dolores López, a minor at the time of the event. The Committee requests the Government to keep it informed in this regard.
- (o) The Committee urges the Government to take all necessary measures to provide adequate protection to Mr Jorge Byron Valencia Martínez. The Committee requests the Government to keep it informed in this regard.
- (p) The Committee urges the Government to increase the budget for protection arrangements for members of the trade union movement so that protected persons do not personally incur any expense as a result. The Committee requests the Government to keep it informed in this regard.
- (q) The Committee again draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

B. New allegations

320. In a communication dated 31 January 2017, submitted in Case No. 3251, the MSICG reports that on 9 November 2016, Mr Eliseo Villatoro Cardona, organization and information secretary and member of the executive committee of the Tiquisate Workers' Union (SEMOT) in the department of Escuintla, was murdered. In that connection, the complainant emphasizes that: (i) Committee on Freedom of Association Case No. 3251 concerns numerous anti-union acts against SEMOT members committed by the Mayor of Tiquisate, Mr Héctor Portillo Coronado, since the union's establishment in October 2015; (ii) these acts – which include withholding the wages of unionized workers in order to force them to resign from the union and dismissing workers who did not yield to pressure – resulted in judicial proceedings brought by the MSICG; (iii) the murder of Mr Eliseo Villatoro Cardona by people who were chasing him down the road was preceded by death threats from the Mayor's office; (iv) the death threats, which were also received by other members of the union, were reported to the Public Prosecutor's Office, which was slow to investigate them; and (v) particularly serious death threats were made publicly by the Mayor against one member of the union, Ms Sara Abigail Lemus Rubio de León. In this case, in keeping with its decision to examine simultaneously the many alleged murders of members of Guatemala's trade union movement and other acts of anti-union violence in Case No. 2609, the Committee will consider both the murder of Mr Villatoro Cardona and the death threats against SEMOT members.

C. The Government's reply

Murders already examined by the Committee

321. In its communication dated 3 May 2017, the Government provides its observations with respect to the various pending issues of the present case. First, the Government refers to the institutional initiatives taken to expedite investigations and ongoing judicial proceedings regarding the killings of members of the Guatemalan trade union movement. In this regard,

the Government indicates that: (i) the collaboration between the Public Prosecutor and the International Commission against Impunity in Guatemala (CICIG) continues with respect to the investigation of a list of 12 homicides selected by the trade union movement, and a total of 12 working meetings took place in 2016, the last of which took place on 30 November 2016; (ii) in the framework of the trade union committee of the Public Prosecutor's Office, collaboration with trade union organizations continues in order to clarify the killings that affected members of the trade union movement; (iii) with a view to having a positive impact on the effectiveness and productivity of its work, the structure of the Special Prosecutor's Office to investigate offences against trade unionists has been strengthened, and now has two dedicated agencies to crimes of disobedience and an agency dedicated to criminal offences against life and physical integrity; (iv) the Special Prosecutor's Unit will then consist of: one Head of Unit, three Fiscal Agents, eight Auxiliary Prosecutors I, two Auxiliary Prosecutors II, three Public Prosecutor Officers and one Investigator of the Criminal Investigations Department; (v) a working meeting was held in January 2017 between the Public Prosecutor's Office and the Criminal Investigation Division of the National Civil Police, in which it was decided to carry out investigations to allow strategic prosecution of ten cases of homicide, in order to individualize the material and intellectual authors of the criminal acts against trade unionists and to render effective the orders of apprehension dictated; (vi) within the framework of the collaboration agreement for the conformation and effective functioning of the Inter-Institutional Coordination Group for information on acts that may constitute criminal offences committed against trade union members and leaders, the Judicial Branch, the Public Ministry, the Ministry of Government and the Ministry of Labour and Social Welfare have been conducting regular meetings since 2014 with regard to the killings of trade union leaders and trade unionists in compliance with the roadmap; (vii) in order to deal with the large volume of labour claims, the judicial body inaugurated in January 2017 the Pluripersonal Court of First Instance of Labour Offences as well as the Pluripersonal Court of First Instance of Labour and Social Security of Chimaltenango; and (viii) the judicial body is working in addition to the Internal Regulations of Courts of Labour and Social Welfare.

322. With regard to the reasons for requesting the termination of the criminal prosecution regarding the killing of Mr Jorge Ricardo Barrera Barco, member of the CGTG, on 22 March 2012, the Government indicates that: (i) that request was based on the fact that Mr Rómulo Emanuel Peña, who had been accused of the killing, had died in the Prison Centre of Fraijanes 1, where he was detained pending his trial; (ii) Mr Rómulo Emanuel Peña was charged with instigating the murder in the context of a mechanism for extortion of funds from public transport pilots; and (iii) the investigation with regard to the perpetrators of the murder continues.

323. As regards the grounds for the acquittal in the criminal proceedings against the perpetrators of the murder of Mr Carlos Antonio Hernández Mendoza, leader of the National Union of Health Workers, who died on the 8 March 2013, the Government indicates that: (i) the acquittal of those accused of the murder was due to the contradictions of witnesses A and B; (ii) the Public Prosecutor's Office initially appealed this decision; (iii) during the proceedings, witnesses A and B stated that they had made false statements and that, in fact, they had not witnessed the murder of Mr Hernández Mendoza; which is why the Public Prosecutor's Office abandoned its objection to the dismissal of the case; and (iv) witnesses A and B are subject to criminal proceedings for false testimony and the Public Prosecutor's Office will once again analyse the steps taken in the investigation to identify the perpetrators behind this crime.

324. With respect to the information requested by the Committee concerning the murders of Mr Jerónimo Sol Ajcot, Mr Gerardo De Jesus Carrillo Navas, Mr William Retana Carias, Mr Manuel De Jesus Ortiz Jiménez, Mr Genar Efrén Estrada Navas, Mr Edwin Giovanni De La Cruz Aguilar, Mr Luis Arnoldo López Esteban and Mr Marlon Velázquez, the

Government states that: (i) there is no record of murders of people named Jerónimo Sol Ajcot, Genar Efrén Estrada Navas, Edwin Giovanni De La Cruz Aguilar and Marlon Velázquez; and (ii) there could be some confusion between certain names and the case of Mr Marlon Velázquez could, for example, correspond to that of Mr Marlon Dagoberto López Vásquez, whose murder resulted in a conviction for murder with robbery on 1 July 2014. The Government then provides information from the Public Prosecutor's Office with respect to the following five murders: (i) with respect to Mr Gerardo de Jesús Carrillo Navas, member of the Workers' Union of the Municipality of Jalapa, the Public Prosecutor's Office indicates that there is an ongoing investigation, that the Union's board of directors did not consider that his murder was due to his union activities, that there are no eyewitnesses, that there is no ballistic coincidence and that the victim's family members indicate that he had not been threatened; (ii) with regard to Mr William Leonel Retana Carias, also a member of the Workers' Union of the Municipality of Jalapa, the Public Prosecutor's Office indicates that two people have been linked to the murder and that, on 10 March 2017, the accused were sentenced to 50 years of immutable imprisonment by the first lower criminal court responsible for high-risk cases involving drug-related and environmental offences; (iii) with regard to Mr Manuel de Jesús Ortiz Jiménez, also a member of the Workers' Union of the Municipality of Jalapa, the Public Prosecutor's Office indicates that on 10 March 2017, the first lower criminal court responsible for high-risk cases involving drug-related and environmental offences, sentenced one of the perpetrators of the crime to 25 years of immutable imprisonment.

- 325.** The Government then provides up-to-date information from the Public Prosecutor's Office on the status of investigations and prosecutions concerning 20 murders of trade union leaders and members of unions with respect to which the Committee had observed in its previous examination of the case that they appeared to be possible indications of anti-union motives. The Government indicates in particular that: (i) an arrest warrant has been issued against Mr León Pacheco, one of the alleged perpetrators of the murder of Mr Oscar Humberto González Vásquez and Mr Miguel Angel González Ramírez, both of whom belong to the Izabal Banana Workers' Union; (ii) the first lower criminal court responsible for high-risk cases involving drug-related and environmental offences of Coatepeque condemned on 27 May 2016 to 18 years of imprisonment to the direct perpetrator of the murder of Mr Diego Chiti Pú, member of the Coatepeque Workers' Union; and (iii) an arrest warrant has been issued against the possible instigators behind the murder of Mr Roberto Oswaldo Ramos Gómez (of the Coatepeque Municipal Workers' Union) and Mr Wilder Hugo Barrios López (of the Union of Minibus Drivers of the Magnolia Camposanto District of Coatepeque).

New murder

- 326.** In its communication dated 3 May 2017, the Government also provides information on the investigations into the murder of Mr Eliseo Villatoro Cardona, leader of the trade union SEMOT, which took place on 9 November 2016. In this respect, the Government indicates that: (i) the National Civil Police of Tiquisate and the Specialized Division of Criminal Investigation of Escuintla, carried out preliminary investigations, respectively, on 9–10 November 2016; (ii) scientific examinations were carried out by the competent institutions; (iii) between 10 November 2016 and 9 February 2017, 11 people including family members, former co-workers of the victim, and leaders and members of SEMOT provided testimony; (iv) on 31 January 2017, Mr Jorge Amilcar Jimenez Conreras, Secretary-General of SEMOT, extended his testimony in which he requested security measures to be taken to all the directors of SEMOT as they felt threatened by the mayor of Tiquisate, who is believed to have the intention of dissolving the trade union; (v) SEMOT's Board of Directors communicated an undated report about the activities that took place since the establishment of the trade union; (vi) on February 3, 2017, a hearing was held in the Criminal Court of First Instance of Santa Lucia Cotzumalguapa to request Jurisdictional control and Authorization to request information from the state telephone companies to

establish the location of telephone cells; and (vii) an extension of the testimony of the mother of the deceased is pending and the general secretariat will be requested to indicate whether there is a ballistic coincidence of the evidence seized.

Other allegations relating to acts of violence

- 327.** With regard to the search carried out by the Office of the Public Prosecutor to determine the existence of a complaint by Ms Lesbia Morales, the Government indicates that the Public Prosecutor's Office carried out a new manual and electronic search of its archives and it came to the conclusion that there was no record of any complaint in the SICOMP system.
- 328.** With regard to the allegations made by one of the complainant organizations concerning Ms Selfa Sandoval Carranza and members of the Workers' Union of the Petén Distribution Company (SITRAPETEN), the Government indicates that the Office of the Public Prosecutor carried out the respective search by means of manual and electronic registration in the SICOMP system and it came to the conclusion that there was no record of any complaint regarding the alleged facts.
- 329.** With respect to the alleged death threats made against Mr Jorge Byron Valencia Martínez, Secretary-General of the Union of Administrative and Educational Service Workers of Guatemala (STAYSEG) and the protection afforded to him, the Government indicates that: (i) on 27 December 2013, the Directorate of the National Civil Police was requested to provide immediate assistance to Mr Valencia Martínez, requesting the reinforcement of patrolling at his home and at work; (ii) the threats that he has received have led to an investigation carried out by the authorities, which is still ongoing; (iii) Mr Byron Valencia has not provided any new evidence; and (iv) no new threats have been reported against Mr Valencia Martínez.
- 330.** In connection with the alleged disappearance of Ms Maria Dolores López, a family member of a witness who had witnessed the murder of a member of the trade union and who was underage at the time of the events, the Government indicates that she was identified and interviewed on the 21 April 2017. Ms Maria Dolores López indicated on that occasion that she had not been a victim of a kidnapping and that she had escaped to live with her boyfriend to whom she is married.
- 331.** With regard to the general measures taken to ensure the protection of members of the trade union movement, the Government indicates that the Protocol for the Implementation of Immediate and Preventive Security Measures in favour of Unionized Workers, Officers, and Trade Union Leaders, including those who advocate for the defence of labour rights, as well as the areas in which they perform the activities, is still in force. The said Protocol was socialized in a public act on 20 January 2017 and published on 22 March 2017 in the *Diario de Centro America*, the country's official newspaper. The Government adds that, in order to ensure that the accommodation costs and meals for police officers are not imposed on those who are subject to threats and who benefit from a personal security measure, in June 2016 the Ministry of the Interior authorized the increase of a special bonus for 700 monthly quetzals (GTQ) making a total of GTQ1,800 quetzals of special bonus for each agent of the National Civil Police, which has been paid since 1 July 2016.

D. The Committee's conclusions

- 332.** *The Committee recalls that in this case, the complainants report numerous murders and acts of violence against trade union leaders and members, as well as impunity in that regard.*

333. *The Committee observes that since its last examination of this case in June 2016, the Governing Body of the ILO has examined on two occasions the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by several Workers' delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution. The Committee recalls that the complaint concerns, among other things, allegations of murders of trade union leaders and members and of prevailing impunity in that regard. The Committee notes in particular that: (i) in October 2013, as follow-up to the complaint made under article 26 of the ILO Constitution, the Government, in consultation with the social partners, adopted a roadmap whereby it undertakes to ensure the timely trial and conviction of the perpetrators and instigators of the crimes against trade union officials and members and to strengthen the prevention and protection mechanisms in respect of threats and attacks against trade union officials and members; and (ii) at its 329th Session (March 2017), the Governing Body decided to defer consideration of the possible appointment of a commission of inquiry until its November 2017 session.*
334. *The Committee takes note of the Government's observations sent in a communication dated 3 May 2017. The Committee also notes that, as follow-up to the complaint made under article 26 of the ILO Constitution, both the Government and the complainants in this case have regularly submitted extensive information to the Governing Body of the ILO. The Committee will refer to this information where relevant to its examination of the allegations in this case.*
335. *For the seventh time, the Committee deeply regrets the numerous acts of violence reported in the complaint and expresses its deep concern about the many murdered trade union leaders and members. The Committee once again draws the Government's attention to the fact that union rights can only be exercised in a climate free from violence, intimidation and threats of any kind against trade union members, and that it is for governments to ensure that this principle is respected [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 44].*

Previously examined allegations of murder

336. *The Committee takes note that, in its observations sent in the context of the present case as well as the information provided in October 2016 and February 2017, as follow-up to the complaint made under article 26 of the ILO Constitution, the Government has informed about the progress of the investigations and criminal proceedings in respect of 84 murders (74 that had previously been reported to the ILO by the trade union movement and an additional ten that had been reported at the national level). The Committee observes that, according to the abovementioned information, and specifically with respect to the 84 murders: (i) 13 convictions, three acquittals and one committal to a psychiatric hospital have been handed down; (ii) one case is currently at the oral hearing phase; (iii) arrest warrants have been issued in seven cases; (iv) three cases are at an intermediary stage of the proceedings; (v) the criminal prosecution has been abated in four cases; (vi) there has been a stay of proceedings in one case; and (vii) 51 cases remain under investigation.*
337. *The Committee also notes that the Government mentions several institutional initiatives designed to facilitate the inquiry into the murders of trade union officials and leaders; these include: (i) a meeting between the Public Prosecutor's Office and the criminal investigation division of the national civil police, in which it was decided to initiate proceedings with a view to strategic criminal prosecution in ten murder cases so that the perpetrators and instigators of the crimes against trade union members can be identified and the arrest warrants served; (ii) reorganization of the Special Investigation Unit for Crimes against Trade Unionists, which will include two agencies that focus on disobedience offences and*

one that focuses on murders and assaults; (iii) the continued activity of the Trade Union Committee of the Public Prosecutor's Office, in which the trade unions, the Public Prosecutor's Office, the Ministry of Labour and the Representative of the Director-General in Guatemala participate on a regular basis; and (iv) continued collaboration with the CICIG in the investigation of a list of 12 murders selected by the trade union movement; the most recent working meeting was held on 30 November 2016.

- 338.** *The Committee takes due note of the initiative designed to strengthen cooperation between the Public Prosecutor's Office and the national civil police in investigating the murders of ten members of the trade union movement. It hopes that this cooperation will continue to be strengthened and institutionalized and requests the Government to keep it informed in that regard. The Committee also notes with interest the Government's indication in the information provided to the Governing Body as follow-up to the complaint made under article 26 of the ILO Constitution, that the implementation of General Directive No. 1-2015 has facilitated rapid identification of the perpetrators of recent murders, particularly Ms Estrada's. Notwithstanding the foregoing, the Committee regrets that there has been no progress on most of the issues that caused it deep concern when it last examined the case: (i) the still-very-low number of murders that have led to convictions (13 out of 84, as well as one committal to a psychiatric hospital), despite the amount of time that has elapsed since the events; (ii) the even smaller number of cases (two) of conviction of the instigators; (iii) the high number of arrest warrants that have yet to be enforced; and (iv) the even higher number of cases under investigation in which, based on the description provided by the Public Prosecutor's Office, there are no immediate prospects of identifying the perpetrators and instigators of the crimes. The Committee recalls in this connection that the absence of judgments against the guilty parties creates in practice a situation of impunity which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see **Digest**, op. cit., para. 52].*
- 339.** *Furthermore, when it last examined the case, the Committee noted with particular concern that there had been no progress in investigating the murders for which evidence of possible anti-union motives has been found (because numerous members of the same union have been killed, the CICIG or the Public Prosecutor's Office itself has already specifically identified a possible anti-union motive, or the victims were members of trade unions which, to the Committee's knowledge, were being targeted by anti-union attacks at the time of the events). In that connection, the Committee has mentioned 20 victims who were members of the Union of Izabal Banana Workers (SITRABI); the Union of Workers of the Municipality of Coatepeque; the Union of Commercial Workers of Coatepeque; the Union of Minibus Drivers of the Magnolia Camposanto District; the National Union of Health Workers of Guatemala; the Union of Municipal Workers of Malacatán, San Marcos; the Union of Technical and Administrative Support Workers of the Criminal Public Defence Institute; or the Union of Migration Clerks [see 378th Report, para. 310]. While taking due note of the information provided by the Government, the Committee observes with regret that with respect to the 20 aforementioned murders: (i) to date, only one condemnatory sentence has been handed down; (ii) with the exception of two arrest warrants that are still to be implemented, each concerning two of the murders committed in Coatepeque, there has still been no progress with the investigations of the abovementioned murders; (iii) the documents of the Public Prosecutor's Office sent by the Government make no mention of inquiries made in relation to the victims' union activities; and (iv) even though the Public Prosecutor's Office refers, in several cases, to the need to reorient the investigations, there is no mention to the trade union activities of the victims as a central axis of the investigations (with the exception of Mr Pedro Antonio García's murder, from the Municipal Workers' Union of Malacatán, where it is indicated that the members of the union will be contacted); and (v) with the exception of the Union of Workers of the Municipality of Coatepeque and the murder of two members of the National Union of Health Workers, the documents sent by the Public Prosecutor's Office make no mention of links between the investigations into the*

murders of several members of the same trade union. In light of the foregoing, and recalling the adoption of General Directive No. 1-2015 of the Public Prosecutor's Office, the Committee again urges the Government to take as a matter of urgency all necessary measures to ensure that the possible anti-union motive for the murders of members of the trade union movement is fully and systematically taken into account in planning and conducting investigations and that the investigations focus on both the perpetrators and the instigators of the acts. The Committee requests the Government to keep it informed, without delay, of the measures taken and the results obtained in this respect, particularly in the aforementioned cases in which possible anti-union motives have been found. In that connection, the Committee emphasizes that it is important for the Public Prosecutor's Office to cooperate closely with the CICIG and to engage with the trade union confederations through the Trade Union Committee of the Public Prosecutor's Office. The Committee requests the Government to take all necessary steps to strengthen the aforementioned cooperation forums with support from the Representative of the Director-General in Guatemala.

- 340.** *Generally speaking, while the Committee is aware of some steps that have been taken since the adoption of the roadmap in 2013, it feels compelled to reiterate that the high degree of impunity that continues to prevail and the very high number of murders awaiting elucidation and sentencing urgently require the allocation of additional economic and human resources to the Special Unit of the Public Prosecutor's Office for Crimes against Trade Unionists. The Committee again urges the Government to inform it promptly of the initiatives taken and the results obtained in this regard. In addition, recalling the comments contained in the 2014 CICIG report on the lack of action of the bodies tasked with administering justice and noting that, as follow-up to the complaint under article 26, the Government reported in February 2016 that the Supreme Court had prepared a draft text in that connection, the Committee encourages the Government to take all necessary measures to establish special courts in order to deal more swiftly with criminal and other offences committed against members of the trade union movement. Noting that the information provided by the Government relating to the establishment of two new courts refers to labour jurisdictions that are not competent to penalize the criminal offences examined in the context of this case, the Committee requests the Government to inform it of the concrete initiatives taken with respect to the establishment of special criminal courts. Furthermore, as in its previous examinations of the case, the Committee continues to observe that the information provided by the Public Prosecutor's Office mentions that in several cases, it is impossible to secure the witnesses' cooperation with the investigation owing to their fear of reprisals. Therefore, the Committee once again urges the Government to develop and implement effective protection measures for persons who agree to cooperate in criminal investigations into acts of anti-union violence. The Committee requests the Government to keep it promptly informed of initiatives taken in this regard.*
- 341.** *When it last examined the case, the Committee requested the Government to provide further information on the reasons for its request for abatement of the criminal prosecution concerning the murder of the CGTG member, Mr Jorge Ricardo Barrera Barco, on 22 March 2012. On this point, the Committee notes that the Government provides information from the Public Prosecutor's Office to the effect that abatement of the criminal prosecution was requested because it was learned that the instigator behind Mr Barrera Barco's murder had died and that the investigations to identify the perpetrators behind the murder are still ongoing. The Committee also observes that the documents from the Public Prosecutor's Office indicate that Mr Barrera Barco, a public bus driver, had refused to pay a bribe demanded by the gang to which the person who orchestrated the crime belonged to. While taking note of this information, the Committee requests the Government to keep it informed of progress in the investigation concerning the perpetrators behind the murder and of any links between the victim's trade union activities and his refusal to pay the bribe demanded by a criminal gang.*

342. *With respect to the stay of proceedings in the case concerning Mr Carlos Antonio Hernández Mendoza, leader of the National Union of Health Workers, who was murdered on 8 March 2013, the Committee takes note of the information provided by the Public Prosecutor's Office through the Government to the effect that: (i) the stay of proceedings by the courts was based on the contradictions of the statements of the two witnesses, who ended up acknowledging that they had not witnessed the murder of Mr Hernández Mendoza; (ii) as a result of the said statements, the Public Prosecutor's Office did not continue with the objection to the stay of proceedings; and (iii) the witnesses are subject to criminal proceedings for false testimony and the Public Prosecutor's Office will once again analyse the steps taken in the investigation to identify the perpetrators and instigators behind this crime. While taking note of this information, and noting that the false testimonies mentioned above could have been part of a manoeuvre to cover up the real perpetrators of the crime, the Committee requests the Government to inform of the results of the ongoing investigations; and particularly of the measures taken in order to identify any relationship between the murder of the trade union leader and his union activities.*
343. *When it last examined the case, the Committee urged the Government to send as promptly as possible information concerning the investigations to identify and bring to justice both the perpetrators and the instigators of the eight murders committed in 2013 and 2014 (Mr Jerónimo Sol Ajcot, Mr Gerardo De Jesús Carrillo Navas, Mr William Retana Carias, Mr Manuel De Jesús Ortiz Jiménez, Mr Genar Efrén Estrada Navas, Mr Edwin Giovanni De La Cruz Aguilar, Mr Luis Arnoldo López Esteban and Mr Marlon Velázquez). In that connection, the Committee notes the Government's information with respect to five of these eight cases: (i) with regard to Mr Gerardo de Jesús Carrillo Navas, member of the Union of Workers of the Municipality of Jalapa, the Public Prosecutor's Office states that the investigation is ongoing, that the union's executive committee considers that his death is unrelated to his trade union activity, that there were no witnesses to the crime, that there is no ballistics match and that the victim's relatives report that no threats had been made against him; (ii) with regard to Mr William Leonel Retana Carias, another member of the Union of Workers of the Municipality of Jalapa, the Public Prosecutor's Office states that two people have been charged with his murder and that on 10 March 2017, the defendants were sentenced to 50 years of immutable imprisonment by the first lower criminal court responsible for high-risk cases involving drug-related and environmental offences for prosecution; (iii) with regard to Mr Manuel de Jesús Ortiz Jiménez, yet another member of the Union of Workers of the Municipality of Jalapa, the Public Prosecutor's Office states that on 10 March 2017, the first lower criminal court responsible for high-risk cases involving drug-related and environmental offences for prosecution sentenced one of the perpetrators of the crime to 25 years of immutable imprisonment. While taking due note of this information concerning the murder of three members of the Union of Workers of the Municipality of Jalapa, and in particular, of the issuance of two condemnatory sentences, the Committee requests the Government to provide information on the motives for the murder of Mr Retana Carias and Mr Ortiz Jiménez and on the investigations conducted in order to identify any link between the murders and the victims' union-related activities; (iv) with regard to Mr Luis Arnoldo López Esteban, member of the Union of Public Service Transport Workers of Ciudad Pedro de Alvarado and of the CGTG, the Public Prosecutor's Office states that the case is under investigation and that on 9 January 2017, the human rights office in the department of murder investigations submitted a report that includes interviews with Ms Dora Alicia Soto González de López, who denies that the motive was extortion, and with the victim's children; and (v) the Public Prosecutor's Office reports that on 1 July 2014, the perpetrator of the 6 January 2014 murder of Mr Marlón Dagoberto Vásquez López was convicted; the perpetrator was a minor and the motive was robbery. The Committee takes note that the Government considers that given the reported date of the murder, the victim's name and a certain similarity in surname, this case may be identical to one of the complainants' complaint concerning the murder of a person known as Marlón Velásquez. The Committee therefore requests the complainants to provide confirmation.*

344. *With regard to the alleged murders of Mr Jerónimo Sol Ajcot, Mr Genar Efrén Estrada Navas and Mr Edwin Giovanni De La Cruz Aguilar, the Committee notes with concern that, almost three years after the corresponding denunciation by the trade union movement, the Government indicates that there are no records of any murders with respect to those names, and that the names indicated by the complainant organizations must have been imprecise. Recalling that the trade union committee of the Public Prosecutor's Office has been established in order to allow an open exchange of information between the Public Prosecutor's Office and the trade unions with respect to the murders and acts of violence affecting members of the trade union movement, the Committee urges the Government to take as soon as possible, the necessary measures in cooperation with the complainant organizations so as to clarify the identity of the persons concerned and to inform on the investigations carried out to identify and bring to justice the instigators and perpetrators of the alleged facts.*

New allegation of murder

345. *The Committee notes with deep concern the MSICG's allegation that Mr Eliseo Villatoro Cardona, organization and information secretary and member of the executive committee of the Tiquisate Workers' Union (SEMOT) in the department of Escuintla, was murdered on 9 November 2016 and that his murder was preceded by numerous anti-union acts committed by the Mayor of Tiquisate, reported in the Committee's Case No. 3251, and by death threats against various SEMOT members that have been reported to the Public Prosecutor's Office. The Committee deeply regrets this additional murder. The Committee also notes that according to the information provided by the Government in relation to the abovementioned murder: (i) 11 people including family members, former co-workers of the victim, and leaders and members of SEMOT provided testimony; (ii) on 31 January 2017, Mr Jorge Amilcar Jimenez Conreras, Secretary-General of SEMOT, extended his testimony in which he requested security measures to be taken to all the directors of SEMOT as they felt threatened by the mayor of Tiquisate, who is believed to have the intention of dissolving the trade union; and (iii) a report produced by SEMOT is being considered in the investigation.*
346. *Recalling the aforementioned principles relating to the effort to combat impunity and the need for prompt investigation and prosecution in cases of acts of anti-union violence, the Committee urges the Government to implement General Directive No. 1-2015 by continuing to take all necessary measures with the greatest diligence to identify and bring to justice the perpetrators and instigators of this murder as promptly as possible and ensuring that the death threats reported to the Public Prosecutor's Office are examined with due promptness and that the SEMOT members who have received threats are provided with the appropriate protection measures immediately. The Committee requests the Government to keep it informed in this regard.*

Other allegations of violence

347. *The Committee notes that in its observations, the Government mentions overall efforts to better protect members of the trade union movement, including: (i) the establishment of a risk assessment committee involving several institutions, such as the national civil police, the Public Prosecutor's Office, the Ministry of Labour and Social Welfare and the Journalists and Human Rights Activists Unit; (ii) the adoption, in cooperation with the trade union movement, of the Protocol for the Implementation of Immediate and Preventive Security Measures for Trade Union Members, Officers, Activists, Leaders and Labour Rights Activists and the Provision of Premises for their Activities; and (iii) the special monthly bonus of GTQ700 that was granted to national civil police officers in June 2016 in order to ensure that their food and lodging costs need not be covered by people who had received threats and been provided with personal security. The Committee also takes note that in the*

information provided in October 2016 and February 2017 as follow-up to the complaint made under article 26 of the ILO Constitution, the Government indicated that from October 2016 to 20 January 2017, the Ministry of the Interior received 14 requests for security measures from trade unionists, due to which 14 risk assessments were conducted, as a result of which two personal security measures and 12 perimeter security measures were authorized.

- 348.** *The Committee notes that it has not received from the complainants the information that it has been requesting since 2013 with regard to the allegations of death threats against a SITRABI board member, Ms Selfa Sandoval Carranza, and of the illegal detention and intimidation of members of the SITRAPETEN in several hotels across the country. Under the circumstances, the Committee will not pursue the examination of these allegations.*
- 349.** *With regard to the request that a full investigation be conducted in the archives of the Public Prosecutor's Office in order to establish the existence of a complaint by Ms Lesvia Morales regarding events from 2009, the Committee takes note, on the one hand, of the indication from the Government that the Public Prosecutor's Office carried out a new search and it was established that there was no record of such a complaint in the manual or electronic SICOMP system. The Committee further notes that the MSICG does not appear to have provided additional details in the search for the above complaint. In these circumstances, the Committee will not proceed with the examination of this allegation.*
- 350.** *With regard to the situation of Ms María Antonia Dolores López, family member of a witness to the murder of a member of the trade union, and a minor at the time of his alleged disappearance, the Committee notes that the Government indicates that: (i) she was interviewed in April 2017 by the competent services; (ii) Ms Dolores López indicated that she had not been a victim of a kidnap but had escaped to live with her boyfriend with whom she is currently married to. The Committee takes note of this information and will therefore not proceed with the examination of this allegation.*
- 351.** *With regard to the situation of the trade union leader, Mr Jorge Byron Valencia Martínez, who had received death threats and to whom the Committee had requested that protective measures be taken, the Committee takes note that the Government indicates that: (i) on 27 December 2013, the Directorate General of the National Civil Police was requested to provide immediate assistance to Mr Valencia Martínez, requesting also the reinforcement of patrols in his home and at his workplace; (ii) the investigation concerning the above threats is still ongoing; and (iii) the trade union leader has not denounced new facts that are related to the complaint it had submitted. The Committee takes note of this information and trusts that, in the event of new threats against Mr Valencia Martínez, he will be provided with the appropriate protection measures.*
- 352.** *While taking note of the Government's information regarding the status of the investigations concerning the killing of several members of the Union of Commercial Workers of Coatepeque, the Committee observes that the Government has still not provided information on the conduct of an inquiry into the attempted extrajudicial killings and death threats sustained by other members of that Union.*
- 353.** *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 once again urges the Government to institute an independent judicial inquiry of the mentioned allegations. The Committee requests the Government to keep it informed in detail about that inquiry and the resulting criminal proceedings.*

The Committee's recommendations

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

- (a) The Committee expresses once again its deep and growing concern over the seriousness of this case, given the many instances of murder, attempted murder, assaults and death threats and the climate of total impunity.*
- (b) The Committee hopes that the cooperation between the Public Prosecutor's Office and the national civil police in investigating the murders of members of the trade union movement will continue to be strengthened and institutionalized and requests the Government to keep it informed in that regard.*
- (c) The Committee again urges the Government to take as a matter of urgency all necessary measures to ensure that the possible anti-union motive for the murders of members of the trade union movement is fully and systematically taken into account in planning and conducting investigations and that the investigations focus on both the perpetrators and the instigators of the acts. The Committee requests the Government to keep it informed, without delay, of the measures taken and the results obtained in this respect, particularly in the aforementioned cases in which possible anti-union motives have been found.*
- (d) The Committee again urges the Government to inform it promptly of the initiatives taken and the results obtained with regard to the allocation, as a matter of urgency, of additional economic and human resources to the Special Unit of the Public Prosecutor's Office for Crimes against Trade Unionists.*
- (e) The Committee urges the Government to take all necessary measures to establish special courts in order to deal more swiftly with crimes and offences committed against members of the trade union movement. The Committee requests the Government to inform it of concrete initiatives taken in this regard.*
- (f) The Committee requests the Government to take all necessary steps to strengthen institutional cooperation with the CICIG and the Trade Union Committee of the Public Prosecutor's Office with support from the Representative of the Director-General in Guatemala.*
- (g) The Committee once again urges the Government to develop and implement effective protection measures for persons who agree to cooperate in criminal investigations into acts of anti-union violence. The Committee requests the Government to keep it promptly informed of initiatives taken in this regard.*
- (h) The Committee requests the Government to keep it informed of progress in the investigation concerning the perpetrators of the murder of Mr Barrera Barco and of any links between the victim's trade union activities and his refusal to pay the bribe demanded by a criminal gang.*

- (i) With regard to the murder of Mr Carlos Antonio Hernández Mendoza, the Committee requests the Government to keep it informed of the results of the ongoing investigations and, in particular, of the measures taken in order to identify any relationship between the murder of the trade union leader and his union activities.*
- (j) The Committee requests the Government to provide information on possible motives for the murders of Mr Retana Carias and Mr Ortiz Jiménez, members of the Union of Workers of the Municipality of Jalapa, and on the investigations conducted in order to identify any link between the murders and the victims' union-related activities.*
- (k) The Committee requests the complainants to confirm that the information provided by the Government with regard to the murder of Mr Marlón Dagoberto Vásquez López on 6 January 2014 corresponds to the allegation that a person known as Marlón Velásquez was murdered on the same date.*
- (l) With respect to the alleged murders of Mr Jerónimo Sol Ajcot, Mr Genar Efrén Estrada Navas and Mr Edwin Giovanni De La Cruz Aguilar, the Committee urges the Government to take as soon as possible the necessary measures so that, in collaboration with the complainant organizations, there can be clarification as to the identity of the people concerned, and to inform it about the investigations taken to identify and bring to justice the perpetrators and instigators of the alleged facts.*
- (m) The Committee urges the Government to implement General Directive No. 1-2015 by continuing taking all necessary measures with the greatest diligence to identify and bring to justice the perpetrators and instigators of the murder of Mr Eliseo Villatoro Cardona and ensuring that the death threats reported to the Public Prosecutor's Office are examined with due promptness and that the SEMOT members who have received threats are provided with the appropriate protection measures immediately. The Committee requests the Government to keep it informed in this regard.*
- (n) The Committee once again urges the Government to institute an independent judicial inquiry into the allegations of attempted extrajudicial killings and death threats sustained by members of the Union of Commercial Workers of Coatepeque. The Committee requests the Government to keep it informed in detail about that inquiry and the resulting criminal proceedings.*
- (o) The Committee once again draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.*

CASE NO. 2948

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

**Complaint against the Government of Guatemala
presented by
the Indigenous and Rural Workers' Trade Union
Movement of Guatemala (MSICG)**

Allegations: The complainant alleges numerous dismissals, transfers and acts of anti-union harassment directed against several public-sector workers' organizations and one private-sector workers' organization and failure of the labour inspectorate and the labour courts to meet their obligation to provide appropriate protection in these cases

- 355.** The Committee last examined this case at its October 2014 session and, on that occasion, presented an interim report to the Governing Body [see 373rd Report, approved by the Governing Body at its 322nd Session (October 2014), paras 335–359].
- 356.** The complainant sent new allegations in a communication of October 2015.
- 357.** The Government sent observations in communications dated 27 January and 3 and 18 February 2015, 10 June 2016 and 3 May 2017.
- 358.** 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

- 359.** At its October 2014 session, the Committee made the following recommendations [see 373rd Report, para. 359]:
- (a) The Committee deeply regrets that, despite several requests and urgent appeals, the Government has failed to provide its observations on a substantial part of the allegations in this case.
 - (b) The Committee requests the Government to take the measures necessary to guarantee that the STOPGN may freely exercise its activities in defence of its members' rights before the institutions responsible for enforcing compliance with labour legislation, and to provide the Committee, as a matter of urgency, with information on the criminal complaint that was allegedly filed against the STOPGN.
 - (c) The Committee requests the complainant to provide further details on the alleged anti-union termination of employment contracts of employees of the Guatemalan Social Security Institute and to send copies of the corresponding judicial rulings.
 - (d) The Committee requests the Government to keep it informed of any new judicial ruling in the proceedings concerning the dismissal of the STIGSS official Miguel Ángel Delgado López and of his current employment situation.

- (e) The Committee requests the Government to provide it with information on the reasons for the disciplinary sanctions imposed on Ms Chiroy Pumay.
- (f) Gravely concerned by the murder of the STIDPP Secretary-General, de Jesús de Ramírez – which was examined by the Committee under Case No. 2609, and was considered by the Public Prosecutor’s Office of Guatemala to be an act of anti-union repression – the Committee urges the Government to send, as a matter of urgency, its observations on the allegations in this case concerning the STIDPP; to ensure in any event that the proceedings brought before the labour inspectorate and the courts in relation to the aforementioned facts result in swift decisions which are implemented; and, in general, to immediately take the necessary steps to safeguard the exercise of freedom of association within the Public Criminal Defence Institute.
- (g) The Committee urges the Government to send, as a matter of urgency, its observations on the allegations concerning the situation of SITRASOLEIDAD and its members, and to ensure that all final judicial orders for reinstatement are executed immediately.

B. The complainant’s new allegations

360. In a communication received in October 2015, the complainant reports new anti-union acts directed against the members and officials of the Union of Organized Workers of the Office of the Attorney-General (STOPGN) and the Indigenous and Rural Workers’ Trade Union Movement of Guatemala (MSICG) as part of a broader attempt by state bodies to criminalize the MSICG. Specifically, the complainant alleges that: (i) on 11 February 2015, three MSICG officials, Ms María de los Ángeles Ruano Almeda, Ms Ingrid Migdalia Ruano and, assisting them, Ms Lesbia Guadalupe Amézquita Garnica filed a criminal complaint against Ms María Luisa Durán, head of the Labour Relations Unit in the Office of the Attorney-General; (ii) the criminal complaint was prompted by Ms Durán’s physical assault on two STOPGN and MSICG members, Ms María Adela Batres Mateo and Ms Margarita Cruz de la Cruz, who are employed by the Office of the Attorney-General’s cleaning service; (iii) the MSICG publicized this complaint; (iv) the public prosecution service hindered the processing and investigation of the complaint and the complainants were not invited to testify until seven months after it had been filed; (v) by contrast, the public prosecution service processed expeditiously the two complaints filed by Ms María Luisa Durán against the MSICG and STOPGN officials in March 2015 in retaliation for the aforementioned criminal complaint by the trade union confederations; (vi) the criminal complaints filed by Ms Durán are based on the two confederations’ legitimate conduct of their trade union activities; (vii) to date, the public prosecution service has not sent copies of the case files corresponding to the complaints to the trade union confederations, thus hindering their exercise of the right of defence; (viii) Ms Durán has also filed a complaint with the Guatemalan Bar Association, requesting that Ms Amézquita Garnica be disbarred in order to prevent her from working on behalf of the MSICG and its affiliates; and (ix) the Ministry of Labour and Social Welfare has employed Ms María Luisa Durán in the past, a fact that sparks fears of future attempts to criminalize the MSICG.

C. The Government’s reply

361. In a communication dated 27 January 2015, the Government sent its observations regarding the allegations of anti-union dismissals and other acts directed against officials of the Union of Workers of the Guatemalan Social Security Institute (STIGSS). With respect to the proceedings concerning the dismissal of union official Miguel Ángel Delgado López and to his employment situation, the Government forwards information provided by the tenth labour and social welfare court to the effect that: (i) in a judgment issued on 22 April 2014, the court denied the request for authorization to dismiss the union official; (ii) the Guatemalan Social Security Institute (IGSS) appealed this judgment before the second chamber of the court of appeals, which has yet to rule on the appeal; and (iii) pending the issuance of this ruling, Mr Delgado López is still employed by the IGSS.

- 362.** With regard to the reasons for the disciplinary sanctions imposed on Ms María Teresa Chiroy Pumay, the Government forwarded information provided by the IGSS to the effect that the three penalties that the administration imposed on her in April 2012 (a one-day and a two-day suspension from duty without pay and a warning) were prompted, respectively, by a backlog that inconvenienced those who depended on her work, since her failure to process orders for special tests undermined patient care, and by her failure to correct a form as instructed; that the aforementioned disciplinary proceedings were carried out with full respect for the right to defence and to a hearing, enshrined in the Constitution of the Republic of Guatemala; and that, for all of these reasons, it is clear that the disciplinary sanctions imposed on Ms Chiroy Pumay in no way constituted acts of anti-union harassment.
- 363.** In a communication dated 3 February 2015, the Government sent its observations on the allegations that the STOPGN had been prevented from carrying out trade union activities. According to the Government: (i) the collective agreement on working conditions between the Office of the Attorney-General and the STOPGN is still in force; (ii) monthly meetings between management in the Office of the Attorney-General and STOPGN's Executive Board and other meetings on urgent matters are being held; and (iii) both the Office of the Attorney-General and the public prosecution service deny all knowledge of the criminal complaint allegedly filed against the STOPGN in 2012 and request that the complaint number be verified so that a full answer can be provided.
- 364.** In a communication dated 10 June 2016, the Government replied to the MSICG's new allegations concerning the STOPGN and forwarded the information provided by the administrative offences branch of the public prosecution service concerning the complaints filed by Ms María Luisa Durán, who, until 2 March 2015, was head of the Labour Relations Unit in the Office of the Attorney-General. The public prosecution service states that: (i) in Complaint No. MP001-2015-37498, the former employee of the Office of the Attorney-General alleges that STOPGN officials committed various acts of corruption, such as unlawfully negotiating on jobs and promotions, requesting that the employment contracts of people who had failed to meet the union's demands not be renewed, and inappropriately obtaining and passing on labour-related information that had been provided to the MSICG in order to encourage the filing of unsubstantiated complaints with the ILO as a form of pressure in order to seek advantages for an MSICG affiliate, the STOPGN; (ii) in Complaint No. MP001-2015-37498, the complainant made a witness statement on 11 and 23 May 2015; on 22 May, it was requested that the case be transferred to the public prosecution service for human rights; and a decision on that request is pending; and (iii) Complaint No. MP001-2015-16448, filed against Mr William Raúl Sandoval Contreras and Mr Alberto Eliu Zelon, concerns allegations of psychological violence against women. The Government then forwarded information provided by the Guatemalan Bar Association regarding the complaint against Ms Lesbia Guadalupe Amézquita Garnica, filed by Ms María Luisa Durán on 12 June 2015, to the effect that this case has yet to be resolved. Lastly, according to the Ministry of Labour and Social Welfare, the fact that Ms María Luisa Durán was formerly employed by the Ministry does not violate any rule.
- 365.** In a communication dated 18 February 2015, the Government sent its observations on the allegations concerning the Union of Workers of the Public Criminal Defence Institute (STIDPP). With regard to the alleged anti-union transfer and subsequent dismissal of Ms Amparo Amanda Ruiz, the Government states that: (i) the administrative appeals against the labour inspectorate's decision (to issue a warning) filed by the Public Criminal Defence Institute (IDPP) were denied; (ii) since Ms Amparo Amanda Ruiz refused to be transferred, the IDPP requested the courts to authorize her dismissal; the request was granted by the lower court and confirmed on appeal and her action of unconstitutionality (*amparo*) was denied; (iii) thus, Ms Amparo Amanda Ruiz has been a former employee of the IDPP since 23 May 2013. Concerning the alleged anti-union dismissal of Mr Fermín Iván Ortiz Maquin and Mr Isidro Sosa de León, the Government states that: (i) the administrative appeals that

the IDPP filed against the labour inspectorate's decisions regarding the dismissal of these two workers were denied; and (ii) the court's judgment on the *amparo* action that the IDPP filed against the labour inspectorate's decisions is pending.

- 366.** With respect to the alleged workplace harassment of Mr Marvín René Doris Orellana, the Government states that: (i) in April and July 2012, the labour inspectorate warned the IDPP not to retaliate against him; and (ii) he is still employed by the IDPP and no termination proceedings have been brought against him. Lastly, the Government states that on 27 January 2015, the Ministry of Labour and Social Protection invited the Director-General of the IDPP to a meeting. The Ministry expressed regret that the Director-General did not attend but was represented by one of his co-workers. The Ministry took note of the IDPP official's statements regarding the negotiation of a collective agreement and the establishment of a joint committee in the IDPP.
- 367.** In a communication dated 3 May 2017, the Government sent its observations on the allegations concerning the trade organization SITRASOLEIDAD and its members. The Government refers in this respect to the information provided by the judicial body, to the effect that: (i) the first instance labour courts ordered the reinstatement of the 37 worker members of SITRASOLEIDAD; (ii) the Labour and Social Welfare Court of Appeal confirmed the reinstatement of 21 workers and revoked the reinstatement of the other 16; (iii) in compliance with the current regulations, a period of five days was granted to the enterprise to comply with the reinstatement orders; (iv) in view of the failure to meet such orders, a fine was imposed to the enterprise, and given that the non-execution of the orders by the enterprise continued, the file was transferred to the Public Prosecutor's Office (confirmation of the criminal act); (v) from then on, any communications from workers were received indicating if they have been or not reinstated in their workstation and demonstrating their interest in the matter; and (vi) the initiatives taken by the Labour and Social Welfare Court of Appeal to get in contact with the dismissed workers and the company were not effective and the only information came from a company representative indicating that the workers that formed the union had left the country a long time ago.

D. The Committee's conclusions

- 368.** *The Committee recalls that this case concerns allegations of numerous dismissals, transfers and acts of anti-union harassment directed against several public sector workers' organizations and one private sector workers' organization and failure of the labour inspectorate and the labour courts to meet their obligation to provide appropriate protection.*
- 369.** *With regard to the allegations of anti-union dismissals and other acts directed against STIGSS officials, the Committee takes note of the information provided by the Government to the effect that on 22 April 2014, the tenth labour and social welfare court denied the request for authorization to dismiss a union official, Mr Miguel Ángel Delgado López; that a ruling on the appeal filed by the IGSS has yet to be issued; and that, pending the issuance of this ruling, Mr Delgado López is still employed by the IGSS. The Committee therefore requests the Government to inform it of the outcome of the appeal for authorization to dismiss Mr Delgado López. It also notes that the Government has forwarded information provided by the IGSS to the effect that the three sanctions that the administration imposed on Ms Chiroy Pumay in April 2012 (a one-day and a two-day suspension from duty without pay and a warning) were prompted by specific errors and omissions in her work.*
- 370.** *The Committee further notes that it has not received the information that it requested from the complainant during its previous examination of the case with regard to allegations of the anti-union termination of numerous employment contracts in the IGSS, including the*

names of the people in question and the dates of the dismissals. Under the circumstances, the Committee will not pursue the examination of this allegation.

- 371.** *With respect to the situation of the STOPGN and its members, the Committee takes note of the Government's statement that the collective agreement between the Office of the Attorney-General (hereinafter "the institution") and the STOPGN is still in force; that monthly meetings between the institution's management and the STOPGN are being held; that both the institution and the public prosecution service deny all knowledge of the criminal complaint allegedly filed by the institution against the STOPGN in 2012; and that further details are needed in order to identify it. The Committee therefore requests the complainant to provide the Government with further details and dates without delay so that the complaint can be identified.*
- 372.** *The Committee takes note of the complainant's new allegation that the former head of the institution's Labour Relations Unit has filed two complaints with the criminal courts and one complaint with the Bar Association against several STOPGN and MSICG officials in May and June 2015, respectively. The Committee also takes note of the complainant's allegation that these complaints were filed in retaliation for legitimate trade union activities and, in particular, for a criminal complaint filed against the aforementioned former civil servant for harassing two members of the cleaning staff. The Committee notes that in its observations, the Government indicates that one of the complaints filed with the criminal courts concerns alleged acts of corruption by STOPGN officials and unlawfully obtained labour-related information that had been provided to the MSICG in order to encourage the filing of unsubstantiated complaints with the ILO, and that none of the aforementioned complaints has been resolved. While noting that the complaints against STOPGN and MSICG officials were filed by a former employee of the institution, for which she was no longer working, the Committee would like to point out that the most recent information provided by the Government shows that there has been a normalization of relations between the union and the institution. Under the circumstances, while requesting the Government to inform it of the outcome of the proceedings in the complaints filed against STOPGN and MSICG officials, the Committee invites the Government to make every effort to encourage the parties to strengthen a climate of dialogue and mutual respect.*
- 373.** *Concerning the situation of the STIDPP and its members, the Committee recalls that the complainant's allegations, which the Committee was obliged to examine in the absence of observations from the Government, concerned the unlawful dismissal and transfer of several union officials in retaliation for complaints filed by the STIDPP; failure to implement the labour inspectorate's decisions regarding the aforementioned events; and failure of the labour courts to rule on the applications for reinstatement submitted. The Committee further recalls that in Case No. 2609, it is also considering the alleged murder of Mr Manuel de Jesús Ramírez, Secretary-General of the STIDPP, on 1 June 2012.*
- 374.** *The Committee takes note of the Government's observations to the effect that: (i) while Ms Amparo Amanda Ruiz Morales' transfer was originally blocked by a decision of the labour inspectorate, her dismissal was subsequently authorized by the lower court and the appeal court and the Constitutional Court rejected her action of unconstitutionality (amparo) because the courts had ruled that there were no anti-union reasons for her dismissal; (ii) with respect to the dismissal of two union leaders, Mr Fermín Iván Ortiz Maquin and Mr Isidro Sosa de León, the court's judgment in an amparo action that the IDPP filed against the decisions of the labour inspectorate, which had ruled that their employment contracts had been unlawfully terminated, is still pending; (iii) Mr Marvín René Doris Orellana is still employed by the IDPP and no termination proceedings have been brought against him; and (iv) with respect to the Minister of Labour's summons to the Director-General of the IDPP, an IDPP adviser to the Director-General reports the*

negotiation of a collective agreement in the IDPP and establishment of a joint committee in the Institute.

- 375.** *While taking note of this information, the Committee observes that the Government, in its observations, does not specify whether the courts have ruled on the application for reinstatement of the union officials, Mr Fermín Iván Ortiz Maquin and Mr Isidro Sosa de León, and whether they have been reinstated. On this point, the Committee recalls that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 826]. Noting that Mr Fermín Iván Ortiz Maquin and Mr Isidro Sosa de León were dismissed in 2012, the Committee requests the Government to inform it of the outcome of the legal proceedings brought by the two workers without delay; if these proceedings are still ongoing, the Committee trusts that the competent courts will issue their judgments in the near future and that those judgments will be executed promptly.*
- 376.** *Regarding the allegations of anti-union dismissals, and failure to execute orders for the reinstatement of numerous members of the Union of Workers of the Agricultural Company Soledad SA (SITRASOLEIDAD) in 2010 and 2011, the Committee takes note that the Government indicates that: (i) the Labour and Social Welfare Court of Appeal confirmed the reinstatement of 21 union workers and revoked the reinstatement of the other 16; (ii) as the result of this non-compliance, a fine was imposed to the company and, since the non-execution of the judicial orders persisted, the file was transferred to the Public Prosecutor's Office; (iii) the concerned workers did not reiterate their interest for the reinstatement; and (iv) while the Labour and Social Welfare Court of Appeal has not been able to contact the non-reinstated workers, a person in charge of the company indicated that the workers had left the country a long time ago.*
- 377.** *In light of these arguments, the Committee requests the Government to inform it on the grounds on which the appeal decision was taken under, in which 21 reinstatement orders of the worker members' union organization SITRASOLEIDAD were confirmed and 16 were revoked. Regarding the 21 reinstatement orders, the Committee notes with concern from the information provided that, despite the fines imposed and the transfer of files to the Public Prosecutor, given the persistent disobedience of the company, the reinstatement orders concerning the dismissals that took place between 2010 and 2011 had not yet been executed. Recalling that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed, [see **Digest**, op. cit., para. 818], the Committee invites the Government to keep it informed on the actions taken by the Public Prosecutor related to the offence of non-execution of the reinstatement orders that would have been committed by the company and to ensure that all the workers concerned by the reinstatement order who wish to reintegrate their job can do so without delay. The Committee requests the Government to keep it informed in this respect.*
- 378.** *Additionally, the Committee again recalls that under the terms of the Memorandum of Understanding signed with the Workers' group of the ILO Governing Body on 26 March 2013 further to the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made under article 26 of the ILO Constitution, the Government made a commitment to adopt "policies and practices to ensure the application of labour legislation, including ... effective and timely judicial procedures". Noting the repetitive character of the cases examined where the*

Committee observes either the slowness of legal proceedings or the non-execution of the reinstatement orders of the dismissed workers on trade union grounds (see Case No. 3062, Report No. 376, October 2015, para. 580; Case No. 2989, Report No. 372, June 2014, para. 316; Case No. 2869, Report No. 372, June 2014, para. 296), the Committee invites the Government to engage in consultation with the relevant social partners to carry out a profound revision of the procedural rules of the relevant labour regulations in a way that permits the judiciary system to offer an appropriate and effective protection in cases of anti-union discrimination. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendations

379. 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 inform it of the outcome of the appeal for authorization to dismiss Mr Delgado López.*
- (b) While requesting the Government to inform it of the outcome of the proceedings in the three complaints filed against STOPGN and MSICG officials in 2015 and requesting the complainant to provide additional information on the criminal complaint allegedly filed against the STOPGN in 2012, the Committee invites the Government to make every effort to encourage the Office of the Attorney-General and the STOPGN to strengthen a climate of dialogue and mutual respect.*
- (c) The Committee requests the Government to inform it without delay of the outcome of the dismissal appeals filed by Mr Fermín Iván Ortiz Maquin and Mr Isidro Sosa de León; if these proceedings are still ongoing, the Committee trusts that the competent courts will issue their judgments in the near future and that those judgments will be executed promptly.*
- (d) The Committee requests the Government to inform it on the grounds on which the appeal decision was taken under, in which 21 reinstatement orders of the worker members' union organisation SITRASOLEIDAD were confirmed and 16 were revoked.*
- (e) The Committee invites the Government to inform it about the actions undertaken by the Public Prosecutor regarding the offence of non-execution of reinstatement orders that would have been committed by the company, and to ensure that all the worker members of SITRASOLEIDAD subject to a judicial reinstatement order that wish to be reinstated to their job can do so without delay. The Committee requests the Government to keep it informed in this respect.*
- (f) The Committee requests the Government to engage in consultation with the relevant social partners to carry out a profound revision of the procedural rules of the relevant labour regulations in a way that permits the judiciary system to offer an appropriate and effective protection in cases of anti-union discrimination. The Committee requests the Government to keep it informed in this respect.*

CASE NO. 2978

DEFINITIVE REPORT

**Complaint against the Government of Guatemala
presented by
the Trade Union Confederation of Guatemala (CUSG)**

Allegations: The complainant organization alleges the mass dismissal of workers, in violation of the provisions of a collective agreement in the municipality of Jalapa, as well as anti-union persecution, dismissals, death threats and attempted murder against members of the Trade Union of Workers of the Municipality of Pajapita

- 380.** The Committee last examined this case at its November 2014 session, when it presented an interim report to the Governing Body [see 373rd Report, paras 360–368, approved by the Governing Body at its 322nd Session (November 2014)].
- 381.** The Government sent its observations in communications dated 23 January 2015 and 7 March 2017.
- 382.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Right to Organise and Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

- 383.** In its previous examination of the case, in November 2014, the Committee made the following recommendations on the questions still pending [see 373rd Report, para. 368]:
- (a) The Committee regrets that, despite the time which has elapsed since the previous examination of the case in March 2013, the Government has not submitted the requested information and observations, despite the Committee having made two urgent appeals to it.
 - (b) The Committee once again requests the Government to keep it informed promptly of the payment of back wages to the workers of the municipality of Jalapa following their reinstatement.
 - (c) The Committee once again urges the Government to hold an independent judicial inquiry without delay into the alleged anti-union acts, death threats and attempted murder of members of the Trade Union of Workers of the Municipality of Pajapita, and to take the necessary measures to guarantee the safety of the persons threatened and to re-establish the climate of trust so as to enable members of the abovementioned union to engage in union activities. The Committee once again requests the Government to inform it without delay of the measures taken in this regard and of the outcome of the inquiry.
 - (d) The Committee firmly expects that the commitments made by the Government of Guatemala, through the signature of the Memorandum of Understanding of 26 March 2013, will be translated into concrete results in relation to the allegations in this case.
 - (e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

B. The Government's reply

- 384.** In its communication of 23 January 2015, concerning the Trade Union of Workers of the Municipality of Pajapita, the Government states, with respect to the death threats allegedly received via telephone as from March 2012 by Ms Guadalupe Floridalma de León and Ms Marili Blanca Stzep Ramírez (the union's General Secretary and Finance Secretary, respectively) that information was requested from the public prosecution service which provided the witness statements in which the two complainants had declined to pursue criminal or civil prosecution. The Government further notes that the Special Investigation Unit for Crimes against Trade Unionists has issued the following decision: "The public prosecution service ... hereby decides: (i) to dismiss the complaint concerning the crime of threats against Ms Guadalupe Floridalma de León and Ms Marili Blanca Stzep Ramírez since the complainants have stated that they do not wish the public prosecution service to pursue the investigation; (ii) to proceed in accordance with article 117 of the Code of Criminal Procedure; and (iii) to close the case.
- 385.** Concerning the complainant organization's allegation that an attempt was made on the life of the union's Labour and Disputes Secretary, Mr Orlando Joaquín Vásquez Miranda, on 5 June 2012, the Government states that since no complaint was filed with the public prosecution service – and therefore no investigation was conducted – there are no grounds for attempted identification of the perpetrators.
- 386.** In its communication of 7 March 2017, the Government provides information on the payment of back wages to the workers of the municipality of Jalapa following their reinstatement. At the outset, it reports that the case has been referred to the Tripartite Committee for the Settlement of Freedom of Association and Collective Bargaining Disputes before the ILO (hereinafter "the Dispute Settlement Committee") so that the issues that prompted the complaint can be addressed; it explains that this mediation procedure was delayed by a change in the municipal authorities in January 2016. With respect to the mediation sessions that took place, the Government reports, among other things, that:
- (i) the union's representatives have provided the Dispute Settlement Committee with documents showing that all of the municipal workers who were dismissed have been reinstated and that they have yet to receive their back wages and other benefits;
 - (ii) the workers have been given access to the municipal health clinics so that they may receive care until the issue of the payment of outstanding contributions to the Guatemalan Social Security Institute is resolved;
 - (iii) pursuant to the Budget Act, the town's mayor has undertaken to make provision for payment of the back and unpaid wages under the 2017 budget. Furthermore, in November 2016, the independent mediator and the technical secretariat of the Dispute Settlement Committee attended a town meeting with several municipal authorities in order to review the budget lines and verify provision for the aforementioned payments;
 - (iv) in order to limit municipal employees to the required number, the local authorities have offered the workers a voluntary retirement plan. It has been learned that, with the support of the town's unions, some 140 people have accepted the plan and that the town has already made several payments to them;
 - (v) the municipal authorities have signed an agreement establishing the Municipal Employee Benefit Plan, under which workers' back contributions will be paid;
 - (vi) with respect to the restructuring of the town's workers, five meetings of representatives of the municipal authorities and the trade unions were held in 2016 in order to evaluate the municipality's workers and to decide jointly which of their contracts would not be

renewed for 2017. In order to ensure municipal workers' enjoyment of the right to work, the town council decided to establish municipal enterprises, which will assume the labour liabilities in respect of those workers; and

- (vii) the union and the municipal authorities have signed a collective agreement on working conditions, which is pending approval by the Ministry of Labour and Social Welfare.

In the light of the foregoing, the Government concludes that: (i) all of the workers who were dismissed have been reinstated; (ii) the town's three trade unions are operating normally and are pursuing their objectives; (iii) there is a commitment and, in fact, a plan for meeting the obligation to pay back wages; (iv) social dialogue, dispute resolution and collective bargaining in the town have been strengthened; and (v) this case is clear proof that the Dispute Settlement Committee is effective when the parties concerned have the will to resolve disputes.

C. The Committee's conclusions

- 387.** *The Committee recalls that this case concerns allegations both of death threats and attempted murder against members of the Trade Union of Workers of the Municipality of Pajapita and of the mass dismissal of workers, in violation of the provisions of a collective agreement, in the municipality of Jalapa.*
- 388.** *With regard to the allegation that Ms Guadalupe Floridalma de León and Ms Marili Blanca Stzep Ramírez (General Secretary and Finance Secretary, respectively, of the Trade Union of Workers of the Municipality of Pajapita) received death threats via telephone as from March 2012, the Committee notes that that the Government has requested information from the public prosecution service, which reports that the two women have declined to pursue criminal or civil prosecution.*
- 389.** *With regard to the allegation that an attempt was made on the life of a union leader, Mr Orlando Joaquín Vásquez Miranda, the Committee takes note of the Government's statement that no complaint was filed with the public prosecution service. The Committee also notes that, according to the complainant organization, no complaint was filed for fear of future reprisals. On this point, the Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 44]. Noting that the failure to investigate Mr Vásquez Miranda's situation could both result in the impunity of whoever made the death threats and place his life at risk and taking into account the specific circumstances and climate in the country, the Committee urges the Government to contact Mr Vásquez Miranda in order to determine whether he requires protection measures.*
- 390.** *With regard to the payment of back wages to the workers of the municipality of Jalapa following their reinstatement, the Committee takes note of the progress achieved within the framework of the Dispute Settlement Committee but regrets that, more than four years after the workers' reinstatement, the issue of the payment of their back wages and related benefits has yet to be resolved. Noting that the town's mayor has undertaken to make provision for payment of the back and unpaid wages under the 2017 budget, the Committee trusts that the back wages of the workers in question will, in fact, be paid in 2017.*

391. *The Committee takes note of the Government's report concerning the initiatives taken within the framework of the Dispute Settlement Committee, such as the voluntary retirement plan and restructuring programme for municipal workers, and trusts that the principles of freedom of association will be fully respected during their implementation.*

The Committee's recommendations

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

- (a) *Taking into account the specific circumstances and climate in the country, the Committee urges the Government to contact the union leader, Mr Orlando Joaquín Vásquez Miranda, in order to determine whether he requires protection measures.*
- (b) *The Committee trusts that the back wages of the workers in question will, in fact, be paid in 2017.*

CASE NO. 2508

INTERIM REPORT

Complaint against the Government of the Islamic Republic of Iran presented by

- **the International Trade Union Confederation (ITUC) and**
- **the International Transport Workers' Federation (ITF)**

Allegations: The complainants allege that the authorities and the employer committed several and continued acts of repression against the local trade union at a city bus company, as well as the arrest and detention of large numbers of trade unionists

393. The Committee has examined the substance of this case on ten occasions, most recently at its November 2016 meeting, when it presented an interim report to the Governing Body [see 380th Report, paras 635–683].

394. The Government sent observations in response to the Committee's recommendations in communications received on 26 October 2016 and 9 May 2017.

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

A. Previous examination of the case

396. At its November 2016 meeting, the Committee made the following recommendations [see 380th Report, para. 683]:

- (a) Deeply regretting that the Government has not provided full replies to its previous recommendations, the Committee urges the Government to be more cooperative in the future and to provide detailed information in relation to the following requests:
- (i) The Committee urges the Government to carry out independent investigations into the allegations of ill-treatment to which Mr Ebrahim Madadi, Vice-President of the SVATH union, and Mr Reza Shahabi, Treasurer of the Syndicate of Workers of Tehran and Suburbs Bus Company are said to have been subjected to while in detention. The Committee further expects that if these allegations are found to be true, both union leaders will be compensated accordingly. The Committee expects that the Government will be able to report without further delay on the outcome of these investigations.
 - (ii) The Committee urges the Government to secure without further delay Mr Shahabi's definitive release, through pardon or other means, the dropping of any remaining charges, as well as the restoration of his rights and the payment of compensation for the damage suffered. The Committee urges the Government to keep it informed in this regard.
 - (iii) The Committee expects that the Labour Law and accompanying regulations will be effectively amended without delay so as to bring them into full conformity with the principles of freedom of association, including by allowing for trade union pluralism at all levels. It encourages the Government to accept the technical assistance of the Office in this regard and, in this framework, to transmit to it the latest version of the draft legislation with a view to ensuring its full conformity with the principles of freedom of association as set out in the Constitution of the ILO and the applicable Conventions.
 - (iv) Pending the implementation of the legislative reforms, the Committee urges the Government to indicate the concrete measures taken in relation to the de facto recognition of the SVATH union, irrespective of its non-affiliation to the Confederation of Iranian Workers' Trade Unions.
 - (v) The Committee once again requests the Government to provide a detailed report of the findings of the State General Inspection Organization (SGIO) and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005. It once again requests the Government, in light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities. The Committee requests the Government to keep it informed in this regard, as well as to provide a copy of the court judgment on the action initiated by the union concerning the attacks on union meetings in May and June 2005, once it is handed down.
- (b) The Committee requests the Government to take the necessary measures to ensure that the charges against Mr Azimzadeh are immediately dropped. It further urges the Government to transmit a copy of the court judgment against Mr Mohammadi and to take the necessary measures to secure his immediate release should his conviction be related to his trade union activities. The Committee also urges the Government to take the necessary measures to secure that he is provided all medical assistance required.
- (c) The Committee urges the Government to provide detailed information on:
- the reasons for the arrest and detention of Mr Ehsanirad, Ms Mohammadi and other Tehran bus workers on May Day 2015;
 - the alleged arrest of Mr Javad Lotfi, Mr Abbas Haghghi, Mr Kioumars Rahimi and Mr Ahmad Saberi; alleged detention of workers of Loushan Cement Factory; alleged sentencing of four petrochemical workers to 50 lashes and six months in prison in 2014, and of five protesting mine workers to one year in prison and lashes for "disturbing public order" in 2015; and alleged arrest and summons to court of workers of Chadormalu iron ore mine;
 - the specific actions that have warranted charges against Mr Ebrahimzadeh and Mr Jarrahi, including copies of the court judgments in their cases; and

- the allegations involving Mr Nejati and in particular, on the charges pending against him.
- (d) The Committee expects that the independent investigation into the circumstances of Mr Zamani’s death will be concluded without delay and requests the Government to provide detailed information on the outcome thereof.
- (e) The Committee requests the Government to ensure that all charges related to the organization of the Labour Day march and the peaceful participation therein pending against Mr Salehi are immediately dropped. It further requests the Government to provide a copy of any judgment in relation to any other charges.
- (f) Noting that the Government reiterates its readiness to receive ILO technical assistance, the Committee expects that the Government will engage with the Office in this regard without delay.
- (g) The Committee draws the Governing Body’s special attention to the extremely serious and urgent nature of this case.

B. The Government’s reply

397. The Government indicates, with regard to the amendment of the Labour Law, that the Amendment Bill was reviewed several times in the Social Committee of the Parliament, in presence of the Government’s representative and social partners; however, discussions were unfruitful as social partners could not reach consensus. At the occasion of the most recent examination of the Bill in the parliamentary committee, the Government provided the MPs with the ILO recommendations and urged the Parliament to continue working on the draft.

398. The Government also indicates that pursuant to Article 8 of Convention No. 87 and Article 3 of Convention No. 98, in order to set up a single authority for organizing labour relations and distinguishing union activities from activities of a merely political nature, the Ministry of Cooperatives, Labour and Social Welfare (hereafter “the Ministry”), in consultation with the Labour Committee of the State Security Council formulated and adopted draft guidelines that were finally approved by the State Security Council in 2011 under the title “Regulations on the handling of trade union demands”. The Regulations establish unified procedures for dealing with union protests. Training of experts in the grievance handling office and the establishment of technical judicial branches are also provided for in pursuant to international standards.

399. The Government indicates that with a view to realizing and developing social and economic justice nationwide, it has prepared and adopted the Charter of Citizens’ Rights, which was unveiled and signed by President Rouhani on 19 December 2016 during the Forum for Constitution and Nation’s Rights. The Charter aims at vindicating and promoting civil rights in the Government’s Plan and Policy, subject to article 134 of the Constitutional Law. It is a collection of civil rights, identified within the legal system references and/or the ones that the Government shall conclusively and inclusively endeavour to identify, create and achieve through reform and development of the legal system, adoption of bills or any other arrangement or necessary legal action. To this end, collaboration of other powers and institutions, also participation of people, organizations, trade associations, NGOs and the private sector is crucial. Passage 10 of the above Charter deals with the right of association, assembly and demonstration, explicitly referring to the right to organize.

400. The Government provides the following indications with regard to regulatory reforms on the agenda of the Ministry. A “Plan on empowerment of workers’ and employers’ organizations and regulation of their participation in the conduct of labour relations” (hereafter “the Plan”) was drawn up with the aim of promoting representation of workers’ organizations at the national and provincial levels and in relation to national and international authorities. The Government indicates that the Plan was discussed with the ILO Governance and Tripartism

Department and ILO advisory views were taken into account in its implementation. As a step to implement the Plan, and in order to settle issues raised in Case No. 2508, the Ministry, in consultation with the social partners, prepared the draft by-law on sections 131 and 136 of the Labour Law pertaining to the procedure of formation, scope of powers, duties and operation of trade unions and associations as well as the method of appointment of workers' representatives in national and international assemblies. In this process, ILO Special Advisor Mr Kari Tapiola and Mr Kamran Fannizadeh, Deputy Director, Governance and Tripartism Department were invited to visit Iran to discuss with all representatives from workers' and employers' organizations and the Government issues of labour relations and the reforms envisaged by the Ministry for changing procedures related to sections 131 and 136 of the Labour Law. The draft by-law has been approved by the Social Committee of the Council of Ministers and is awaiting the approval of the plenary Council. It is hoped that once approved, this by-law will expedite the implementation of the Plan. The Government further indicates that on 10 September 2016, the Minister of Cooperatives, Labour and Social Welfare issued the Ministerial Order entitled "Job security in conjunction with investment and production security" where, among other points, it was emphasized that workers' and employers' organizations must be empowered through the amendment of the existing by-laws with a view to preparing the ground for accession to Conventions Nos 87 and 98, as well as through access to skills and adequate training and legal services.

- 401.** The Government further indicates that although it intends to revise the abovementioned by-laws with a view to enhancing compliance with international labour standards, it wishes to emphasize that the present labour law sets a framework that is favourable to the establishment and empowerment of workers' and employers' organizations nationwide. The following figures are provided as an illustration of this statement: by September 2016, the number of registered organizations exceeded 12,009, of which 9,481 were workers' and 2,528 were employers' organizations. The number of organizations established since the current Government took office – September 2013 – amounts to 4,448; including 3,872 workers' and 576 employers' organizations respectively.
- 402.** The Government draws the attention of the Committee to the specific circumstances created for the Islamic Republic of Iran. During the past two years, the intensification of unilateral sanctions affected the country's international trade relations and entailed the closure of certain industrial units and the inability of certain employers to pay workers. Consequently the workers' problems were aggravated, but the Government support programmes were to a great extent successful in bringing the situation under control and any initiative aiming at mitigating the problems of the working class was welcomed. As the sanctions impacted vulnerable segments of the Iranian population, the steps taken by the Government and other Non-Aligned Movement member States resulted in the appointment by the United Nations Human Rights Council of a Special Rapporteur to investigate the unfavourable human rights impact of unilateral sanctions (the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights). The Government expresses its hope that the establishment of this mandate would effectively contribute to the removal of unilateral sanctions and prevent the taking of similar measures with regard to other countries; as well as its readiness to analyse the impacts of these sanctions on the Iranian workers' and employers' community with the collaboration of the ILO.
- 403.** With regard to the allegations of persecution of a number of labour activists, the claims related to their judicial status and the Committee's request as to their release, the Government reiterates that in dealing with labour-related infringements, it tries to apply the highest possible level of tolerance and in some cases even after the finalization of judicial verdicts, efforts were made to obtain reduction of punishment and pardon. In a few cases where the accused had misused the available capacities in the labour area for illegal objectives such as support of terrorist aims, encouragement of subversive armed action and

creation of ethnic and religious hatred, charges were investigated with utmost clarity in accordance with the law.

- 404.** The Government indicates that Mr Mohammad Jarrahi was released from prison on 22 August 2016 upon termination of his prison term and Mr Davoud Razavi was released on bail on 1 September 2015. Messrs Javad Lotfi, Abbas Haghghi, Ahmad Saberi and Kioumarth Rahimi, workers at a synthetic fibre company, were all released on bail on 27 November 2013. In a judgment dated 2 January 2015, the Court of Appeal reduced their six-month imprisonment sentence to three months and decreased the term of probation from two years to one year. This term has now expired and the case is closed.
- 405.** With regard to the case of Mr Ali Nejati, the Government reiterates that he was released on bail on 17 October 2015 and that his case is still pending at the Prosecutor's Office.
- 406.** With regard to the case of Mr Reza Shahabi, the Government indicates that he clearly contravened the law and as it cannot be assumed that labour activists can have illegal activities and assist terrorist organizations under the cover of labour activities, the Government expects that the Committee refrain from further examination of this issue in view of the detailed information provided and the leniency shown in this regard. The Government further specifies that Mr Shahabi was arrested on 14 June 2010 for assembly and collusion with the intent to commit crimes against national security through communication with the Monafeghin terrorist group [Mujahedin-e Khalgh Organization, MKO], receiving remuneration from them and propaganda against the Islamic Republic. According to the Government, this organization was recognized as a terrorist group by various countries and its actions resulted in the loss of life of more than 17,000 Iranian nationals as well as a number of Iraqi citizens during Saddam Hussein's rule. The Government states that Mr Shahabi was a bus driver in a city bus company. According to the available evidence, he was an affiliate of the MKO as of the end of 2008 and continued his cooperation with them up to the time of his arrest through supplying manipulated news and information and participation in illegal gatherings where he took pictures and recorded videos that he subsequently transmitted to the organization via the Internet. Mr Shahabi communicated with one of MKO's liaisons named Sharam Soheili by phone and e-mail and was receiving a monthly salary in his and his wife's bank account for sending news and information needed by the organization. Mr Shahabi also introduced other persons such as Mr Saeid Torabian and Mr Hassan Mohammadi to the organization and received significant financial assistance from it. Mr Torabian, who is related to Mr Shahabi, was arrested and confessed that Mr Shahabi had connected him to the MKO towards the end of 2008. Mr Shahabi declared that someone named Shahram Soheili, a collaborator of one of the news agencies, had paid them a monthly amount of 4 million Iranian rials (IRR) per person in exchange for supply of confidential news. The Government states that given the above facts, Mr Shahabi was put to trial on charges of assembly and collusion with the intent to commit crimes against national security through cooperation with the MKO terrorist group and propaganda against the Islamic Republic. On 10 April 2012, the court, having heard the accused and his counsel's defence and in accordance with rules of due process, sentenced him to five years' imprisonment on the first charge, to one year on the second – taking into account the time he had already spent in detention – as well as to the restitution of IRR70 million in favour of the Government, which corresponded to the amount he had earned through criminal activity. The provincial court of appeal confirmed the verdict on 13 June 2012. Through the application of article 134 of the revised Islamic Penal Code (IPC), the sentence was reduced to five years' imprisonment and the restitution of the amount mentioned above. The Government indicates that regrettably, Mr Shahabi continued his linkage with the abovementioned organization and during his leave from prison committed acts contravening the law, as a result of which a new case was filed against him and he was sentenced to one year imprisonment on charges of propaganda against the State. His final conviction was notified to the prison on 9 January 2015. The Government draws the attention

of the Committee to the fact that Mr Shahabi has been granted furlough several times while serving his prison sentence, and that the execution of the sentence was suspended between 16 February and 6 May 2015. The Government adds that, at the date of the communication, Mr Shahabi was free and as he had repented, the possibility of granting him pardon was under consideration.

407. With regard to the case of Mr Ebrahim Madadi, the Government indicates that he was prosecuted for assembly and collusion against national security and disturbing public order and peace through attending illegal gatherings. On 1 May 2016 the court sentenced him to five years and three months' imprisonment in accordance with article 610 of the IPC in conjunction with article 137 of the same Act governing the punishment applicable in case of recidivism. The Government further indicates that Mr Madadi's case was investigated in accordance with the law, and his acts constituting infringements of the law were established with utmost clarity and care. As his attorney did not appeal within the legal time limit the first instance verdict became final. The Government adds that Mr Madadi was released on bail and was free at the time of the communication, and concludes that as his criminal actions were irrelevant to labour activities, there is no ground for compensation and requests the Committee to refrain from any further examination of the matter.

408. With regard to the allegations of ill-treatment of Mr Shahabi and Mr Madadi in detention, the Government indicates that any kind of persecution is strictly prohibited pursuant to articles 32, 38 and 39 of the Constitution, and that the legislature has rejected all forms of torture and enacted fully fledged regulations to ensure its prevention, notably through article 169 of the new IPC; paragraphs 1, 6, 7, 9 and 10 of the single article of the Law on Respect for Legitimate Freedoms and Protection of Civil Rights; and article 169 of the Executive By-law on State Prisons and Security and Corrective Measures Organization. The Government further indicates that in practice, the necessary oversight measures were taken through the establishment of Civil Rights Monitoring Boards in Tehran and provincial capitals. Any breach of the law is addressed through the dispatching of inspection groups and the review of received reports. The Law on Respect for Legitimate Freedoms and Protection of Civil Rights and the relevant executive guideline also provide for a litigation mechanism for those who claim the violation of their civil rights, so that the officials and persons challenging the law are held responsible. The secretariats of the central and provincial oversight boards are in charge of enforcing the law. The Government indicates that as a result of the constantly increasing supervisory measures, the number of complaints referred to the inspection and grievance boards has significantly decreased during recent years. In the period between 2012–16, some 38,557 inspections of disciplinary, judicial and prison authorities were conducted throughout the country. In this same period 11,093 complaints and violation reports were registered through provincial boards and the online complaint registration system, out of which only 4,332 were receivable. The examination of these cases in the central and provincial boards resulted in the issuance of 622 warnings to the judicial staff; 385 warnings to the administrative personnel; 128 disciplinary proceedings against judges and 116 referrals to the judicial authorities. As a result of the inspections conducted, provincial boards praised 511 persons for discharging their duties in full respect of civil rights. The Government emphasizes that out of 4,332 reports and complaints investigated, only a small percentage entailed prosecution for violation of civil rights. It further indicates that the law provides for reparation of material and moral damages resulting from the offence, and requests the Committee to provide any information and documentation it might have regarding the claim raised by Mr Madadi for investigation and follow-up.

409. With regard to the recognition of the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH), the Government indicates that it has not received any application from this organization and expresses its readiness to take measures for registration of any worker's and employer's organization in accordance with the applicable laws.

410. With regard to technical cooperation, the Government indicates that workers' and employers' groups and the governmental division of labour relations attended an ILO workshop on various types of labour contracts. The Government further requests technical assistance for a course for Iranian judges and indicates that the ILO's readiness to provide assistance in the training of disciplinary forces that deal with labour protests has been transmitted to the relevant unit and the necessary coordination will be made once their reply is received. The Government finally states that while it considers that there is room for improvement with regard to compliance with international standards, it has always pursued the empowerment of workers' and employers' organizations, and requests the Committee to assist it in carrying out its initiatives through mutual understanding and recognition of the positive trend in empowerment of labour organizations in Iran.

C. The Committee's conclusions

411. *The Committee recalls that this case, lodged in July 2006, concerns acts of repression against the SVATH, as well as the arrest and detention of large numbers of other trade union members and officials, and the insufficient legislative framework for the protection of freedom of association.*

412. *The Committee notes the Government's indication that while an amendment bill to the Labour Law was reviewed several times in the Social Committee of the Parliament, discussions remained unfruitful as the social partners could not reach consensus. The Committee further notes that the Government has provided the MPs with the ILO recommendations and urged the Parliament to continue working on the draft. In the meantime, the Government has engaged in a process of amendment of the by-laws (regulations) on sections 131 and 136 of the current Labour Law pertaining to the procedure of formation, scope of powers, duties and operation of trade unions and associations with a view to facilitating and enhancing the representation of workers' organizations at the international, national and provincial levels.*

413. *The Committee recalls that, in other cases addressing the legislative framework for freedom of association in Iran, it had noted that the proposed amendments to the Labour Law sections 131 and 135 contained aspects that were not in conformity with the principles of freedom of association and had observed that, as various components of freedom of association were to be regulated through additional specific regulations, it was not clear to what extent the proposed amendments would guarantee, in law and in practice, the right of workers to come together and form organizations of their own choosing, independently and with structures which permit their members to elect their own officers, draw up and adopt their by-laws, organize their administration and activities, and formulate their programmes in the defence of workers' interests without interference from the public authorities [see 371st Report, Case No. 2807, paras 575 and 577]. Recalling that it has already on several occasions requested the Government to amend the current Labour Law so as to bring it into conformity with the principles of freedom of association [see 362nd Report, Case No. 2567, para. 86; 371st Report, Case No. 2807, para. 574 and 359th Report, para. 700], the Committee trusts that the Parliament will soon be in a position to adopt amendments to the Labour Law as requested above and requests the Government to provide detailed information on the assistance currently being sought from the ILO in this regard and the progress made on the legislative reform.*

414. *Concerning the amendment of the current regulations pertaining to the procedure of formation, scope of powers, duties and operation of trade unions and associations referred to by the Government, the Committee, while awaiting information on the progress made in respect of the Labour Law, welcomes any Government measure aiming at the enhancement of freedom of association and the empowerment of workers' and employers' organizations pending the completion of the legislative reform process. The Committee requests the*

Government to keep it informed of the status of the revision of these Regulations and to send a copy of the latest draft.

- 415.** *The Committee notes the information provided by the Government as to the approval by the State Security Council of the Regulations on the handling of trade union demands in 2011, establishing unified procedures for dealing with union protests. The Committee notes that the Government provides little specific information as to the content of the Regulations and the way in which they enhance freedom of association rights including the right of workers to peaceful assembly. It further recalls that since 2011, it has received several allegations in the context of this case as to the intervention of security forces in labour protests and the arrest, detention and eventual prosecution and condemnation of workers for participation in them [see 380th Report, Case No. 2508, paras 644–646], with regard to which the Government has not provided any specific observations. In these circumstances the Committee is not in a position to assess the import of the 2011 Regulations in view of guaranteeing freedom of association rights in law and in practice. It therefore requests the Government to provide it with a copy of the Regulations as well as its responses to the allegations referred to above so as to enable it to examine these matters in full knowledge.*
- 416.** *While it takes due note of the information of the release and commuting of the sentences of synthetic fibre company workers, Messrs Javad Lotfi, Abbas Haghghi, Ahmad Saberi and Kioumarth Rahimi, the Committee is bound to recall that the charging, arrest and detention – even if only briefly – of workers for legitimate activities in relation to their right to freedom of association constitutes a violation of the principles of freedom of association.*
- 417.** *Noting the information provided as to the release of Mr Jarrahi at the end of his prison term, the Committee recalls that in its latest recommendations it had requested the Government to provide detailed information as to the specific actions that have warranted charges against him. As the Government has not provided any information in this regard, the Committee is bound to reiterate its previous request.*
- 418.** *With regard to the case of Mr Ali Nejati, the former president of the Haft Tapeh Sugar Company Workers' Syndicate, the Committee notes that the Government reiterates that he was released on bail in October 2015. Noting that the Government indicates that Mr Nejati's case is still pending without providing any details on the charges pending against him, the Committee is bound to reiterate its previous request to provide detailed information in this regard.*
- 419.** *The Committee notes the information provided by the Government as to Mr Davoud Razavi's release on bail in September 2015. Recalling that Mr Razavi, a member of the SVATH board of directors, was one of the trade unionists whose arrest and detention was brought to the attention of the Committee at the beginning of its examination of this case in 2007 [see 346th Report, para. 1185], and that in 2011 the Government had provided information as to his release [360th Report, para. 802], the Committee notes with great concern that he has once again been arrested and charged and requests the Government to provide detailed information with regard to the charges brought against him and the specific acts concerned.*
- 420.** *With regard to the cases of Mr Reza Shahabi and Mr Ebrahim Madadi, the Committee notes with deep concern the Government's indication that new charges have been brought against these trade unionists, that they have been put on trial once again and given final sentences of one year, and five years and three months' imprisonment respectively. The Committee notes the Government's statement about the previous condemnations of Mr Shahabi, while not providing the judgment itself or his response, and its indication that on this last occasion he was condemned for propaganda against the State (section 500 of the IPC), while Mr Madadi was sentenced for acting against national security (section 610 of the IPC). The Committee observes however, that no information is provided as to the specific actions that*

have warranted the renewal of these charges against them, nor have the judgments against them been provided. Recalling that it had previously observed in its examination of this case that criminal law, in particular articles 500 and 610 of the IPC were systematically used to punish trade unionists for engaging in legitimate trade union activities [see 350th Report, Case No. 2508, para. 1105], and in view of the fact that once again the Government does not indicate what actions have entailed these charges, the Committee is bound to note that the latest condemnations of Mr Shahabi and Mr Madadi reproduce an unmistakably familiar pattern. Considering that the frequent arrest and sentencing of trade unionists to long periods of imprisonment under such general charges in this case is likely to severely hinder the exercise of legitimate trade union activities, the Committee firmly urges the Government to bring its conclusions to the attention of the Iranian judiciary with a view to ensuring that peaceful trade union activists are not sentenced to prison on vague charges of acting against national security and propaganda against the State.

421. *The Committee further notes that the Government indicates that both trade unionists are free on bail, and hence understands that they might be summoned at any moment to return to prison. The Committee recalls that Mr Shahabi and Mr Madadi have each already spent more than five years in prison and that since June 2007, when it first took up the examination of this case, it has urged the Government at numerous occasions to immediately release one or the other and drop any additional charges against them [see 350th Report, para. 1107(g); 354th Report, para. 927(h); 357th Report, para. 692(b); 368th Report, para. 583(b); 371st Report, para. 596(a)]. The Committee further recalls that it had deplored the fact that Mr Madadi, sentenced to two years' imprisonment in October 2007, was only released in April 2012, despite the Committee's systematic recommendation for his release. The Committee had expressed the expectation that his rights be restored and the damage he had suffered be compensated [see 360th Report, para. 807(b); 364th Report, para. 593(b)]. The Committee is bound to note that the possibility of being summoned back to prison creates a situation of great insecurity for these trade unionists who have already been deprived of their liberty for long years, and is liable to have an intimidating effect and cause prejudice to the normal development of trade union activities in general. In view of these conclusions, and noting the Government's consideration of the possibility of granting a pardon to Mr Shahabi and the fact that the first instance verdict for Mr Madadi became final because his attorney did not appeal within the time limit, the Committee firmly expects that the sentences against Mr Shahabi and Mr Madadi will be lifted definitively and that they will not spend any more time in prison. The Committee requests the Government to keep it informed of developments in this regard.*

422. *The Committee notes the general information provided by the Government with regard to the legal and institutional framework available to prevent ill-treatment of detainees and hold those responsible into account and the overall statistics provided in relation to such complaints. The Committee recalls however that it has repeatedly called for the conduct of independent investigations into the specific allegations of ill-treatment to which Mr Shahabi and Mr Madadi were said to have been subjected while in detention [see 375th Report, para. 371(a); 380th Report, para. 683(a)(i)]. Recalling that the prohibition of torture and ill-treatment is a peremptory norm of international law which, pursuant to the Government's observations, is also reflected in Iranian law, and that governments are bound to take all the necessary measures to prevent such acts, punish the perpetrators and compensate victims, the Committee strongly urges the Government to use the institutional machinery described in its latest communication, or any other appropriate mechanism or body qualifying as independent and impartial, to conduct a full investigation into the claims of ill-treatment of Mr Shahabi and Mr Madadi while in detention and to keep it informed of the outcome thereof.*

- 423.** *Noting that the Government has not provided any information as to the conclusion and outcome of the investigation into the circumstances of Mr Shahrokh Zamani's death in prison – presumably concluded after 18 months – the Committee once again requests the Government to provide detailed information as to the outcome thereof.*
- 424.** *With regard to the recognition of the SVATH, the Committee notes the Government's indication that it has not received any application from this organization and that it would take measures for registration of any organization in accordance with the applicable laws. The Committee recalls that, aware of the fact that the current Labour Law establishes an organizational monopoly and hence does not allow for the registration of the SVATH, it had repeatedly urged the Government to take the necessary measures with a view to the de facto recognition of the SVATH pending the completion of legislative reforms. The Committee is therefore bound to reiterate this recommendation and request the Government to keep it informed of the measures taken in this regard without further delay.*
- 425.** *Regretting that the Government has not replied to many of its recommendations, the Committee is bound to reiterate them and urges the Government to provide detailed information thereon without delay.*
- 426.** *The Committee takes due note of the general indication of the Government that in the past two years the intensification of unilateral sanctions has affected Iran's international commercial relations and entailed the closure of industrial units and the inability of employers to pay wages, thus harshly deteriorating the situation of workers. The Committee wishes to emphasize that, especially in times of great economic difficulty, permanent and intensive social dialogue represent a critical factor in the development of sustainable national economic and social policy, but that social dialogue can only be effective within a framework of full respect for freedom of association.*

The Committee's recommendations

- 427.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) In view of the absence of concrete results in this case, the Committee has requested its Chairperson to make contact with its representatives attending the June 2017 International Labour Conference in order to encourage a more effective engagement in response to the Committee's long-standing recommendations.*
 - (b) Trusting that the Parliament will soon be in a position to adopt amendments to the Labour Law so as to bring it into conformity with the principles of freedom of association, the Committee requests the Government to provide detailed information on the assistance sought from the Office and the progress made on the legislative reform, and to send it a copy of the latest drafts.*
 - (c) The Committee requests the Government to send it a copy of the Regulations on the handling of trade union demands approved by the State Security Council in 2011, and provide detailed observations as to how these Regulations have enhanced the freedom of association rights, and in particular the right to peaceful assembly in practice.*

- (d) *Noting with great concern that Mr Davoud Razavi has once again been arrested and charged, the Committee requests the Government to provide detailed information with regard to the charges brought against Mr Razavi and the specific acts concerned.*
- (e) *Noting with deep concern that Mr Ebrahim Madadi and Mr Reza Shahabi, the Vice-President and the Treasurer of the SVATH respectively, have been put on trial once again and sentenced to one year, and five years and three months imprisonment respectively and noting the Government's consideration of the possibility of granting a pardon to Mr Shahabi and the fact that the first instance verdict for Mr Madadi became final because his attorney did not appeal within the time limit, the Committee firmly expects that these sentences will be lifted definitively and that they will not be returned to prison. The Committee requests the Government to keep it informed of developments in this regard.*
- (f) *Considering that the frequent arrest and sentencing of trade unionists to long periods of imprisonment under such general charges in this case is likely to severely hinder the exercise of legitimate trade union activities, the Committee firmly urges the Government to bring its conclusions to the attention of the Iranian judiciary with a view to ensuring that peaceful trade union activists are not sentenced to prison on vague charges of acting against national security and propaganda against the State.*
- (g) *The Committee strongly urges the Government to use the institutional machinery described in its latest communication, or any other appropriate mechanism or body qualifying as independent and impartial, to conduct a full investigation into the claims of ill-treatment of Mr Shahabi and Mr Madadi without further delay and to keep it informed of the outcome thereof.*
- (h) *The Committee once again urges the Government to take the necessary measures with a view to the de facto recognition of the SVATH pending the completion of legislative reforms and to keep it informed of the developments in this regard.*
- (i) *Regretting that the Government has not provided replies to several of its recommendations at the last examination of this case, the Committee urges the Government to provide detailed information in relation to the following requests:*
- (i) *The Committee once again requests the Government to provide detailed information as to the outcome of the independent investigation into the circumstances of Mr Shahrokh Zamani's death in prison.*
- (ii) *The Committee requests the Government to take the necessary measures to ensure that the charges against Mr Azimzadeh are immediately dropped. It further urges the Government to transmit a copy of the court judgment against Mr Mohammadi and to take the necessary measures to secure his immediate release should his conviction be related to his trade union activities. The Committee also urges the Government to take the necessary measures to secure that he is provided with all medical assistance required.*

- (iii) *The Committee urges the Government to provide detailed information on:*
- *the reasons for the arrest and detention of Mr Ehsanirad, Ms Mohammadi and other Tehran bus workers on May Day 2015;*
 - *the alleged detention of workers of the cement factory; the alleged sentencing of four SVATH workers to 50 lashes and six months in prison in 2014, and of five protesting mineworkers to one year in prison and lashes for “disturbing public order” in 2015; and the alleged arrest and summons to court of workers of the iron ore mine;*
 - *the specific actions that have warranted charges against Mr Ebrahimzadeh and Mr Jarrahi, including copies of the court judgments in their cases; and*
 - *the allegations involving Mr Nejati and in particular, on the charges pending against him.*
- (iv) *The Committee requests the Government to ensure that all charges related to the organization of the Labour Day march and the peaceful participation therein pending against Mr Salehi are immediately dropped. It further requests the Government to provide a copy of any judgment in relation to any other charges.*
- (v) *The Committee once again requests the Government to provide a detailed report of the findings of the State General Inspection Organization (SGIO) and the headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union’s founding, from March to June 2005. It once again requests the Government, in light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities. The Committee requests the Government to keep it informed in this regard, as well as to provide a copy of the court judgment on the action initiated by the union concerning the attacks on union meetings in May and June 2005, once it is handed down.*
- (j) *The Committee draws the Governing Body’s special attention to the extremely serious and urgent nature of this case.*

CASE NO. 3156

DEFINITIVE REPORT

**Complaint against the Government of Mexico
presented by
the Union of Workers of the Social Security Institute
of the State of Guanajuato (SITISSEG)**

Allegations: Obstacles to the establishment of the complainant union, with suspension of the official recognition (registration) of the union; establishment of a trade union with close ties to the employer and favouritism towards it; threats and intimidation, denial of access to the competent authorities, and other acts of anti-union discrimination

- 428.** The complaint is contained in a communication dated 18 May 2015 from the Union of Workers of the Social Security Institute of the State of Guanajuato (SITISSEG).
- 429.** The Government sent its observations in communications dated 26 May 2016 and 10 April 2017.
- 430.** Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

- 431.** In its communication dated 18 May 2015, SITISSEG alleges obstacles to the establishment of the complainant union, with suspension of the official recognition (registration) (*toma de nota (registro)*) of the union, the establishment of a trade union with close ties to the employer and favouritism towards it, and also threats and intimidation, denial of access to the competent authorities, and other acts of anti-union discrimination against the general secretary and other members of the complainant organization.
- 432.** The complainant union alleges that after mass dismissals in 2013 the workers began to organize with a view to forming a union and on 9 October 2014 the constituent assembly of SITISSEG took place. The complainant reports that after 17 October the commercial director and the general director of the Social Security Institute of the State of Guanajuato (ISSEG, hereinafter: the Institute) contacted the general secretary of SITISSEG, Mr Mauricio García Flores, to bribe and threaten him (in particular with offers of a salary increase in conjunction with a managerial post and threats that he would lose his job) in an attempt to make him leave the trade union movement, provide information on individuals forming the union, and make a recording of a union meeting (to this end, he was provided with recording equipment). The general secretary rejected these requests despite the pressure placed on him, using the recording equipment to record meetings with senior staff of the Institute at which attempts were made to persuade him to leave the union. The complainant alleges that one of these meetings was attended by Mr Alejandro Rivera Rivera, the general secretary of the Federation of Unions of Workers in the Service of the State Government and Municipalities (FSTSGEM) and a member of the executive board of the Institute, and that during that meeting it was hinted that the latter could establish another union.

- 433.** The complainant union alleges that on 21 October 2014, further to the establishment of SITISSEG and the refusal of its general secretary to leave the union, the director of the Institute appeared at the workplace of the SITISSEG general secretary to dismiss him personally, indicating that the decision came from the Institute's executive board and from the governor himself.
- 434.** Moreover, the complainant union reports the fact that, also in October 2014, as part of the campaign against it, an anonymous complaint was made alleging sexual harassment. Despite the fact that prosecution of any such offence would occur only if a complaint was made by the injured party, the public prosecution service opened proceedings and presented a warrant for the arrest of the general secretary of the union at the pharmacy where he worked, with the police intimidating the staff and causing the forced disappearance of a number of women – one of them for over five hours (in relation to these actions, the commercial director of the Institute indicated that these were normal procedures and that there were no detainees). One of the individuals affected, Ms Elizabeth Pérez Nava, filed a complaint in this regard with the Human Rights Procurator's Office of the State of Guanajuato. The complainant also indicates that armed officials of the public prosecution service attempted to make the colleagues of the general secretary sign prepared statements, but they refused to do so.
- 435.** The complainant union also alleges that, on 28 October 2014, Mr Rivera Rivera, a member of the executive board of the Institute, initiated a "fast-track" procedure to establish a trade union on instructions from the State Government, using coercion and deceit to get the workers to join it, and on the same day filed an application to register the union with the conciliation and arbitration board of the municipality of Guanajuato. The complainant expresses its shock at the fact that the board granted trade union registration to the "phantom" union in the record time of one day (in contrast to the harassment endured by the complainant). Moreover, on 7 November 2014, the union established by Mr Rivera Rivera signed a collective agreement with the Institute in which no benefits were increased; to all intents and purposes, it was a "phantom" agreement.
- 436.** In the wake of these events, the complainant union had recourse to the Human Rights Procurator's Office of the State of Guanajuato and alleged the violation of collective human and labour rights. With the support of the Procurator's Office, an agreement was reached containing various pledges – the Institute undertook to reinstate the general secretary, to refrain from any reprisals against him for filing the complaint with the Procurator's Office and to refrain from damaging, violating or restricting the right of association or from violating the principles of freedom of association; the general secretary undertook to drop both his complaint before the Procurator's Office and his labour complaint. As regards the complaint filed by Ms Elizabeth Pérez Nava alleging illegal deprivation of freedom and excesses committed by the public prosecution service, the legal staff of the Institute asked her to withdraw the complaint and offered her financial benefits through promotion. Initially Ms Pérez Nava did not accept but several days later she was visited by staff from the Institute who insisted that she withdraw the complaint, otherwise she could lose her job. In the end she withdrew the complaint and several weeks later she was promoted.
- 437.** The complainant organization also denounces delays and obstacles with regard to the recognition of SITISSEG, with the suspension of its official recognition (registration). It alleges that the official recognition was communicated 35 days late with the requirement to complete additional procedures not laid down in law, such as evidence of the members' wishes (the complainant argues that this requirement was not imposed on any other union). Moreover, the complainant indicates that in February 2015 the union established by Mr Rivera Rivera applied to have the official recognition of SITISSEG invalidated, claiming that SITISSEG had been formed by individuals who held positions of trust and that it comprised fewer than 20 workers (false statements in both cases) and asking for the official recognition to be suspended. The complainant reports that, even though this was an

unprecedented provisional measure not provided for in law, the Ministry of Labour granted the measure, suspending the official recognition of SITISSEG. In the same month, the complainant filed a request for *amparo* (protection of constitutional rights) and the judiciary ruled in favour of SITISSEG, granting it protection from the arbitrary suspension measure. Nevertheless, at the time of presentation of the complaint, the local conciliation and arbitration board had not complied with the judicial ruling. SITISSEG denounces the fact that, as a result, it remains suspended by the labour authority, which is subordinate to the executive authority. Moreover, the complainant states that the union established by Mr Rivera Rivera, which according to the complainant is controlled by the employer and the State, filed an appeal with the conciliation and arbitration board against the decision revoking the suspension, and that SITISSEG replied to this in April 2015.

- 438.** The complainant alleges that the authorities of the Institute, and also other public authorities of the State, have prevented or refused communication or meetings with the SITISSEG representatives. Specifically, the complainant refers, in its account of the events that occurred between October 2014 and March 2015, to numerous cases of failure to reply to its requests, including for the holding of meetings (as well as failure to reply to its phone calls), and also to cases of meetings that were proposed but not held (for example, in November 2014 the authorities summoned representatives of the union to a meeting to prevent a demonstration and after waiting for hours the representatives were informed that the authorities could not receive them; and after the official recognition of the union in January 2015 the director of the Institute did not reply to repeated requests from the union for meetings to be held).
- 439.** Furthermore, to illustrate the anti-union stigmatization suffered by members of the complainant union, SITISSEG alleges that in April 2015, in the context of a competition for a post of pharmacy administrator, a union member was not considered for the post despite having more seniority and excellent examination results, and the post was awarded to a worker on condition that she joined the other union. The complainant adds that staff are now being recruited without any obligation to take examinations and on the sole condition that they join the union established by Mr Rivera Rivera.

B. The Government's reply

- 440.** In its communications of 26 May 2016 and 10 April 2017, the Government supplied the observations of the authorities concerned in reply to the complainant's allegations. It indicates that in view of the coexistence of two trade union organizations at the Institute, disputes have arisen regarding the right to represent workers and both unions have taken legal action in this regard. The Government emphasizes that the labour authority has taken lawful and impartial decisions in all cases, respecting the rights of the trade unions. It explains that the registration of the complainant union (SITISSEG) is valid and the union can take whatever action it wishes in exercising its rights.
- 441.** As regards the allegations concerning a warrant for the arrest of the general secretary of SITISSEG and violence against and detention of some members of the union, the Government has sent the observations of the Prosecutor-General's Office of the State of Guanajuato. The Prosecutor-General's Office states that it received a complaint regarding acts allegedly constituting sexual harassment and indicates that, after the relevant checks had been made and evidence had been gathered, it was established that the acts in question had occurred with the consent of both parties, and so it was decided that there would be no criminal prosecution. The Prosecutor-General's Office points out that at no time was the general secretary harassed or disturbed, and no attempt was made to locate him at his workplace. Moreover, no arrests were made and no pressure was exerted on witnesses, and no staff were subjected to deprivation of freedom or intimidation (the Prosecutor-General's Office recalls that the fact that police officers are armed and have special equipment reflects

the nature of their work and does not imply that they engage in intimidation or forced disappearances). The Prosecutor-General's Office also denies that instructions were received from the state authorities or the Institute at any time or that the Prosecutor-General's Office is ever used for purposes other than those established in the national Constitution. As regards the complaint filed by Ms Pérez Nava with the Human Rights Procurator's Office of the State of Guanajuato for alleged deprivation of freedom, the Prosecutor-General's Office points out that it was decided to dismiss the proceedings on account of the withdrawal of the complaint and emphasizes that at no time did the aforementioned Office illegally deprive Ms Pérez Nava of her freedom, and so her allegations lack substance and objectivity.

- 442.** The Government also rejects the allegation of the “fast-track” establishment of a trade union at the Institute with immediate granting of registration. The Government indicates that the State Union of Workers of the Social Security Institute of the State of Guanajuato (SETISSEG), represented by its general secretary Mr Alejandro Rivera Rivera, had already obtained its registration decades earlier, on 26 November 1984, as shown in the file of the Conciliation and Arbitration Tribunal of the aforementioned State. In this regard, the action taken in October 2014 was merely concerned with the request to update the list of active members, and also the official recognition (*toma de nota*) of the union's new executive committee – which does not constitute the registration (*registro*) of a new trade union.
- 443.** As regards the allegation of threats to and the dismissal of the SITISSEG general secretary, the Government states that the latter had recourse to the Human Rights Procurator's Office of the State of Guanajuato (the state body that upholds the protection of human rights) and put forward similar arguments to those contained in the complaint before the Committee. The proceedings before the Human Rights Procurator's Office concluded with an agreement to dismiss the proceedings on the basis of conciliation, without any examination of the veracity or accuracy of the allegations in the absence of proof and without any recognition of injurious conduct by the authorities. As a guarantee of action by the public authority, pledges were made to continue safeguarding the human rights of the parties. Under the abovementioned agreement, the SITISSEG general secretary withdrew the complaint that had been filed, recognizing that there was no basis for presuming the alleged violations. The Institute considers that the statements in the complaint relate to the exercise of the worker's personal rights, which were recognized by the competent authority, and that they do not relate to the sphere of freedom of association. As regards the references to recordings, the Institute indicates that it is unable to comment since the recordings were not handed over by the complainant, and what they contain and whether they actually exist is unknown. The Institute points out that there has never been any opposition to the establishment of a trade union and it denies having dismissed the SITISSEG general secretary – least of all because of the establishment of a trade union or instructions from superiors. It also emphasizes that no salary payments were ever withheld.
- 444.** As regards the allegation that a “phantom” collective agreement was signed, the local conciliation and arbitration board states that on 2 December 2014 the collective agreement concluded between the Institute and SETISSEG was registered, since the agreement duly complied with the requirements of the Federal Labour Act.
- 445.** As regards the allegation that the official recognition (registration) of the complainant union was suspended, the Under-Ministry of Labour of Guanajuato states that the conciliation and arbitration board, complying with the *amparo* ruling referred to by the complainant, issued a new decision dated 3 August, revoking the suspension and recognizing the legal entities and rights of SITISSEG. Consequently, the Under-Ministry rejects the complainant's statement that the judicial ruling issued in the *amparo* proceedings was not complied with. It points out with regard to the proceedings that: (i) the measure had been taken in the context of legal action to invalidate the registration of SITISSEG brought by the SETISSEG general secretary, who called for the suspension; (ii) the suspension was granted by a decision of

24 February, against which SITISSEG filed an *amparo* appeal on 26 March 2015; (iii) on 21 April 2015, a ruling was issued granting *amparo* to the complainant union; (iv) the SETISSEG general secretary filed an appeal to review this decision; the appeal was rejected on 23 July 2015 by a judicial decision upholding the contested ruling; (v) consequently, on 3 August 2015, the board complied with the ruling, revoking the suspension order; (vi) on 20 August 2015, the judiciary confirmed that the board had complied with the ruling; (vii) on 7 October 2015, a decision was adopted declaring that there were no grounds for the claim for invalidation and SETISSEG instituted direct *amparo* proceedings in this regard; (viii) after conducting the proceedings on the basis of the evidence presented, the conciliation and arbitration board issued a new decision on 14 September 2016 in which it ruled that there were no grounds for invalidating the registration of SITISSEG, since there was no proof that there had been any failure to meet the legal requirements for registering the aforementioned union.

C. The Committee's conclusions

446. *The Committee observes that the complaint is concerned with allegations of obstacles to the establishment of the complainant union, with suspension of the official recognition (registration) (toma de nota (registro)) of the union, the establishment of and favouritism towards a trade union with close ties to the employer, and also threats and intimidation, denial of access to the competent authorities, and other acts of anti-union discrimination against the general secretary and other members of the complainant organization.*
447. *While duly noting the replies provided by the Government and the divergences between the allegations of the complainant union and the observations of the authorities concerned, the Committee observes that, according to the information supplied, as a result of the actions of the national judiciary and the human rights protection authorities: (i) agreements were reached through conciliation, without establishing liability with regard to the allegations of dismissal, violence and deprivation of freedom (as a result of which it was agreed to reinstate the general secretary of the complainant union, and a pledge was made to respect the principles of freedom of association and to drop the complaints made against the public authorities); and (ii) as regards the suspension of registration of the complainant organization, further to the decisions issued, SITISSEG is duly registered and is fully entitled to exercise freedom of association.*
448. *As regards the other allegations of anti-union practices, such as stigmatization of the members of SITISSEG and favouritism towards SETISSEG, which, according to the complainant, continued after the adoption of the conciliation agreements (for example, allegations of favouritism and anti-union interference in recruitment procedures), and the allegations that the authorities of the Institute and other public authorities repeatedly failed to reply to numerous applications and requests for meetings made by the representatives of SITISSEG, the Committee observes that the Government has not supplied any observations in this regard. The Committee invites the Government to promote dialogue between the complainant union and the authorities of the Institute with a view to fostering harmonious labour relations and, if necessary, ensuring adequate protection of the complainant's trade union rights.*

The Committee's recommendation

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

The Committee invites the Government to promote dialogue between the complainant union and the authorities of the Institute with a view to fostering harmonious labour relations and, if necessary, ensuring adequate protection of the complainant's trade union rights.

CASE NO. 3018

INTERIM REPORT

**Complaint against the Government of Pakistan
presented by
the International Union of Food, Agricultural, Hotel, Restaurant,
Catering, Tobacco and Allied Workers' Associations (IUF)**

Allegations: The complainant organization alleges anti-union actions by the management of a hotel in Karachi and the failure of the Government to ensure freedom of association

- 450.** The Committee last examined this case at its May–June 2016 meeting, when it presented an interim report to the Governing Body [see 378th Report, paras 573–588, approved by the Governing Body at its 327th Session].
- 451.** The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) provides additional information in a communication dated 4 April 2017.
- 452.** The Government provides its observations in a communication received on 8 May 2017.
- 453.** 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

- 454.** At its May–June 2016 meeting, the Committee made the following recommendations [see 378th Report, para. 588]:
- (a) The Committee deeply regrets that, despite the time that has elapsed since the complaint was presented in April 2013, 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 three urgent appeals and in a meeting between the Chairperson and one of its representatives. The Committee urges the Government to provide its observations on the complainant's serious allegations without further delay.
 - (b) While observing that the specific issues raised in this case concern the Sindh Province, the Committee is bound to remind the federal Government that the principles of freedom of association should be fully respected throughout its territory. The Committee urges the

Government to bring its conclusions and recommendations to the attention of the competent authorities of the Sindh Province without delay with a view to resolving the pending matters in this case and to obtain full particulars from the Sindh Province for the Committee's next examination.

- (c) The Committee once again urges the Government to take all necessary steps to ensure, without further delay, the execution of the final ruling of Sindh Labour Appellate Tribunal, thus to secure the reinstatement of the workers in question and compensation for lost wages and any damages suffered. In the case of the union member who died while awaiting the enforcement of the judgment, the Committee urges the Government to ensure that his heirs receive adequate compensation. The Committee requests the Government to provide detailed information on the steps taken in this regard.
- (d) The Committee urges the Government to provide detailed information on the progress of the proceedings concerning the workers who were allegedly denied access to the workplace after the events of March 2013. The Committee firmly expects that the Sindh High Court's decision will be rendered without further delay and that it will be fully executed and requests the Government to provide a copy of the final judgment once it is delivered.
- (e) The Committee once again urges the Government to institute an independent inquiry into the following allegations without further delay and to keep it informed of all steps taken in this regard and the outcome of the investigation: (i) the harassment of union members; (ii) the acts of violence on 25 February and 13 March 2013 against several union members, General Secretary Ghulam Mehboob and workers participating in a strike; and (iii) the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them.
- (f) The Committee urges the Government to take measures to encourage and promote free and voluntary negotiations between the employer and the union at the hotel, with a view to peaceful resolution of outstanding matters and for the determination of workers' terms and conditions of employment through binding collective agreements and requests the Government to keep it informed of the measures taken in this regard.

B. The complainant's additional information

455. In its communication dated 4 April 2017, the complainant alleges that the Government has not taken any positive action in response to the Committee's previous recommendations and provides information on the latest developments in the case. In particular, the complainant indicates that: (i) in July 2016, the Sindh Cabinet was reorganized with a new Chief Minister, who appointed a new Labour Advisor; (ii) on 18 July 2016, the Secretary of the Labour Ministry, Sindh Province called a first meeting between the management of the Pearl Continental Hotel in Karachi (hereinafter, the Hotel) and the Hotel trade union but the management failed to attend; a second meeting organized the following day was attended by the management who stated that they would consult the head office; (iii) further meetings were held in July and August 2016 but did not produce any results and in September 2016, the Secretary of the Labour Ministry once again approached the Hotel management and asked the union to prepare a draft collective agreement but the management refused to discuss the issues; (iv) although the union approached the Secretary of the Labour Ministry on several occasions between September 2016 and January 2017, it was repeatedly told that the management was not ready to talk to the union or negotiate any of the issues; and (v) in separate meetings between the lawyers of the employer and the union, employer representatives clearly indicated that the management was not ready to negotiate with the union or to reinstate the unfairly dismissed workers. According to the complainant, the Government of Sindh, through the Labour Advisor and the Secretary of the Labour Ministry, failed to take any measures to address the management's consistent refusal to negotiate with the union. In December 2015, the unions of the group's hotels in Karachi and Lahore decided to establish a national union focused on resolving local issues and obtaining reinstatement of the dismissed workers. In March 2017, the national union approached the National Industrial Relations Committee (NIRC) to issue a certificate of collective bargaining.

456. With regard to the status of workers and union members referred to in the complaint, the complainant provides the following updated information: (i) out of 65 workers – 49 permanent and 16 casual – who were barred from work in 2013, three workers resigned, 46 were sent on indefinite leave, while receiving salaries, and the cases of 62 workers are currently before the NIRC; and (ii) out of 33 union officers and active members who had been dismissed, five reached retirement age, one died, eight resigned and 19 are waiting for reinstatement as per court order, while receiving wages, but the management appealed to the Sindh High Court against their reinstatement order.

C. The Government's reply

457. In its communication received on 8 May 2017, the Government indicates that it is cognizant of the gravity of the issues in this case and is making earnest efforts to resolve the dispute by persuading all stakeholders to dispose of the matter in question. In particular, the Government states that: (i) the Ministry of Overseas Pakistanis and Human Resources Development (OPHRD) is constantly in touch with the Sindh Labour Department in order to get the issues resolved; (ii) the Secretary of the Labour Ministry, Sindh Province arranged various meetings with the Hotel management and after a series of long arguments, the management orally accepted 60 per cent of the demands of the Hotel union and the workers; (iii) the Director of Sindh Labour Department requested the General Secretary of the Hotel union to consider an amicable settlement of the dispute but was informed about the workers' grievances – five cases were pending before the Sindh High Court, 40 cases were before a member of the NIRC, a further 18 were before a full bench of the NIRC and two more were in Session Court; (iv) the Ministry of OPHRD is seeking further details from the Sindh Labour Department as to the proceedings concerning workers who were allegedly denied access to the workplace after the events of March 2013, the NIRC has been requested to dispose of the cases of union members and Hotel employees as a matter of priority and the cases pending before the Sindh High Court should also be pursued for quick disposal; and (v) after discussing the issue of compensation to aggrieved workers, the Sindh Labour Department informed that the Workmen Compensation Commissioner of South Division of the Labour Department has been directed to decide and dispose of all five cases of dues involving claims of millions of rupees within the shortest possible time.

458. With regard to the Committee's request to institute an independent inquiry into a series of alleged incidents of harassment, violence, arrest and filing of criminal charges against trade unionists in March 2013, the Government indicates that the Ministry of OPHRD has listed this case in the agenda of the upcoming Federal Tripartite Consultation Committee (FTCC) for necessary action. The Government also states that it noted the Committee's previous request to promote free and voluntary negotiations between the parties and that it will inform of any progress.

D. The Committee's conclusions

459. *The Committee recalls that this case concerns serious allegations of anti-union actions including transfer and dismissal, harassment, arrest and criminal prosecution of trade union members and officials by the management of a hotel in Karachi in the Sindh Province and the Government's failure to ensure freedom of association.*

460. *The Committee notes, on the one hand, the additional information provided by the complainant in which it alleges that the Government has not taken any concrete action to positively address the Committee's recommendations and that despite a number of meetings with the Hotel management, no significant progress has been made on the pending issues and, on the other hand, the Government's indication that it is making earnest efforts to*

resolve the dispute by continuously persuading all stakeholders to dispose of the matter in question.

461. Regarding the alleged dismissals of trade union members, the Committee recalls that, according to the complainant, out of the 33 dismissed workers, eight have resigned, five reached retirement age and one died in the meantime. The Committee further notes the updated information provided and expresses deep concern at the fact that, more than four years after the Sindh Labour Appellate Tribunal upheld the 2011 ruling of the Sindh Labour Court ordering reinstatement of the Hotel union's General Secretary and 20 other union members, 19 workers have yet to be reinstated while management's appeal to the Sindh High Court is still pending. The Committee also notes the Government's indication that a Compensation Commissioner from the Labour Department has been directed to dispose of five cases regarding claims for compensation but observes that the Government does not specify whether this measure concerns workers who reached the retirement age, the heirs of the worker who died or any other workers. Recalling its previous examination of this issue, the Committee notes that this case raises serious concerns as to the effectiveness of the existing legal guarantees and judicial mechanisms of protection against anti-union discrimination. It wishes to emphasize once again that delay in the conclusion of proceedings giving access to remedies for anti-union discrimination diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante [see 378th Report, para. 584]. Under these circumstances, the Committee firmly expects that the Sindh High Court's decision on the management's appeal will be rendered without further delay and, should the reinstatement order be confirmed, urges the Government to ensure the execution of the ruling and to secure the reinstatement of the workers in question and compensation for lost wages and any damages suffered. In the case of the union member who died while awaiting the enforcement of the judgment, the Committee requests the Government to indicate the steps taken in follow-up to its previous recommendations that his heirs receive adequate compensation. The Committee also requests the Government to inform on the outcome of the claims for compensation before the Compensation Commissioner and to provide the judgment of the Sindh High Court once adopted.
462. With regard to the 65 workers who were allegedly denied access to the workplace in the aftermath of the industrial action in March 2013, the Committee recalls from its previous examination of the issue that several proceedings were initiated before the National Industrial Relations Committee (NIRC), that reinstatement of 32 workers was ordered but that the employer obtained a stay order from the Sindh High Court and that the matter was sub judice before the Court. The Committee observes that both the complainant and the Government indicate that numerous cases of workers' grievances are still pending before the competent entities – the complainant states that the cases of 62 workers are still pending before the NIRC and according to the Government, 65 cases are pending before the Sindh High Court, the Session Court and the NIRC. While taking due note of the Government's indication that, following its intervention, all pending cases concerning trade union members and Hotel workers, should be dealt with as a matter of priority, the Committee is bound to note once again that the ineffectiveness of legal and judicial protection has had a lasting and detrimental effect on the freedom of association and collective bargaining rights of the Hotel employees and emphasizes that justice delayed is justice denied [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 105]. In light of these considerations, the Committee firmly expects that the Sindh High Court's decision on the matter will be rendered without further delay and that all proceedings pending before the NIRC concerning the workers who were allegedly denied access to the workplace after the events of March 2013 will be properly and expeditiously dealt with. The Committee once again urges the Government to provide detailed information on the progress of these proceedings.

- 463.** *The Committee notes the Government's indication that its previous request to institute an independent inquiry into allegations of anti-union harassment and violence has been submitted to the FTCC for necessary action. In view of the gravity of the allegations, the Committee expects that the discussion of the FTCC will be fruitful and that an independent inquiry will be instituted into the following allegations without further delay: (i) the harassment of union members; (ii) the acts of violence on 25 February and 13 March 2013 against several members of the Hotel trade union, its General Secretary Ghulam Mehboob and workers participating in a strike; and (iii) the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them. The Committee requests the Government to keep it informed of all steps taken in this regard and the outcome of the investigation.*
- 464.** *The Committee further notes that the complainant denounces, on the one hand, the management's refusal to negotiate with the trade union on the outstanding issues, despite the elaboration of a draft collective agreement requested by the Labour Ministry and various meetings held, and on the other hand, the lack of measures taken by the Government of Sindh in response to the management's consistent refusal to negotiate. The Committee notes, however, the Government's statement that it has been constantly in touch with the Sindh Labour Department to get the issues resolved, that after lengthy meetings and discussions, the management orally accepted 60 per cent of the trade union's demands and that the Director of Sindh Labour Department requested the General Secretary of the union to consider an amicable settlement of the dispute. The Committee trusts that the Government will continue its efforts towards a peaceful resolution of the outstanding matters and requests it to keep it informed of any developments in this regard.*
- 465.** *Finally, considering this case as urgent due to the time that has elapsed without any resolution to these long-standing matters, the Committee firmly hopes that the Government will be in a position to provide detailed information on the effective implementation of its recommendations in the very near future.*

The Committee's recommendations

- 466.** *In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee firmly expects that the Sindh High Court's decision on the management's appeal against the reinstatement order of 19 union members will be rendered without further delay and, should the reinstatement order be confirmed, urges the Government to ensure the execution of the ruling and to secure the reinstatement of the workers in question and compensation for lost wages and any damages suffered. In the case of the union member who died while awaiting the enforcement of the judgment, the Committee requests the Government to indicate the steps taken in follow-up to its previous recommendations that his heirs receive adequate compensation. The Committee also requests the Government to inform on the outcome of the claims for compensation before the Compensation Commissioner and to provide the judgment of the Sindh High Court once adopted.*
- (b) *The Committee firmly expects that the Sindh High Court's decision concerning the workers who were allegedly denied access to the workplace after the events of March 2013 will be rendered without further delay and that all proceedings pending before the NIRC in this regard will be properly and*

expeditiously dealt with. The Committee once again urges the Government to provide detailed information on the progress of these proceedings.

- (c) *In view of the gravity of the allegations, the Committee expects that the discussion of the Federal Tripartite Consultative Committee will be fruitful and that an independent inquiry will be instituted into the following allegations without further delay: (i) the harassment of union members; (ii) the acts of violence on 25 February and 13 March 2013 against several members of the Hotel trade union, its General Secretary Ghulam Mehboob and workers participating in a strike; and (iii) the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them. The Committee requests the Government to keep it informed of all steps taken in this regard and the outcome of the investigation.*
- (d) *The Committee trusts that the Government will continue its efforts towards a peaceful resolution of the outstanding matters and requests it to keep it informed of any developments in this regard.*

CASE NO. 3146

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

**Complaint against the Government of Paraguay
presented by
the Single Confederation of Workers (CCT)**

Allegations: campaign by the authorities promoting withdrawal from the trade union; requests for revocation of its registration; other acts of anti-union discrimination against its officers and members; and refusal to bargain collectively

- 467.** The complaint is contained in a communication dated 2 March 2015 from the Single Confederation of Workers (CCT).
- 468.** The Government sent its observations in a communication dated 25 July 2016.
- 469.** Paraguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 470.** In its communication of 2 March 2015, the CCT alleges that the National Institute of Technology, Standardization and Meteorology's Union of Professionals and Technicians (INTN Sindical) has been subjected to anti-union harassment.

471. The complainant reports that INTN Sindical was harassed by one of the general directors of the National Institute of Technology, Standardization and Meteorology (hereinafter “the Institute”) during his two terms of office (July to December 2012 and 16 August 2013 to the date on which the complaint was presented, respectively) through: (a) a campaign, launched in July 2012, that led to the withdrawal of over half of the union’s members (a fact that was reported to the General Director of the Institute and to the Ministry of Justice and Labour); (b) two requests for revocation of INTN Sindical’s registration, made by the General Director of the Institute (the General Director for Labour decided not to grant the revocation request but the Institute persisted with a second request); (c) dismissal of three members of INTN Sindical who enjoyed security of tenure (Ms Delia Ríos, Ms Silvia Vidal and Ms Elba Ramírez) without an administrative investigation; (d) during the General Director’s first term of office, intimidation of the trade union’s general secretary, who was summoned to a meeting at which an attorney from the Institute’s legal office threatened him with dismissal unless he withdrew from the union; (e) violation of the right to freedom of expression through a decision (No. 064/2014) requiring the General Directorate’s express approval of trade union announcements and notices and imposing other conditions (the content must be of trade union or general interest and may not include insults and incitement that impugn the integrity of individuals or foment hatred on the part of public servants; and (f) harassment of other members of the union through transfers and other anti-union measures: (i) the Deputy General Secretary, Ms Nancy Melgarejo, was transferred twice with no regard for her profile; (ii) the union’s spokesperson, Ms Carmen Mallorquín, was transferred twice (first to an isolated, unsafe and unclean office and then with a demotion) and dismissal proceedings (subsequently dropped) were brought against her; (iii) the current General Secretary of the union, Ms Delfina de Franco, was demoted and threatened with dismissal; (iv) dismissal proceedings were brought against the organization’s Secretary, Mr Mario Leiva, on three occasions (the proceedings were dropped on two occasions and on the third, which ended in dismissal, they were procedurally flawed); (v) the union’s Deputy Communications Secretary, Ms Trini Jimenez, received a two-step demotion, dismissal procedures (subsequently dropped) were brought against her and she was relieved of some of her duties; (vi) the union’s Finance Secretary, Ms Rita Rodríguez, was removed from her post, demoted, investigated and threatened with dismissal; (vii) Mr Miguel Ángel Barrios was unfairly transferred for attempting to make management transparent; and (viii) Ms Susana Cabrera and Mr Ricardo Ramírez were demoted. During these periods, complaints of anti-union discrimination were brought before the congressional human rights committees and those of other institutions, such as the Ministry of Industry and Trade and the Public Service Secretariat. The complainant also indicates that two tripartite meetings – at which the union’s representatives reiterated the complaints that they had brought before the labour administration, alleging anti-union harassment – were requested and held and that no agreement with the employer was reached.

472. Lastly, the complainant alleges that the Institute’s authorities are unwilling to grant the requests for the signing of a collective agreement made by INTN Sindical and two of the Institute’s other unions.

B. The Government’s reply

473. In a communication dated 25 July 2016, the Government transmits the observations of the Institute and the General Labour Directorate in reply to the allegations contained in the complaint.

474. The Institute makes the following arguments in its defence: (a) with regard to the alleged anti-union harassment by the General Director, who, during his first term of office, is said to have forced over half of the union’s members to withdraw, the Institute states that after he was removed from office, the members who had withdrawn from the union did not re-join it even though the supposed harasser had left his post (the Institute maintains that the

complaint was, in fact, prompted by the fact that INTN Sindical's officers are public servants who formerly held senior posts in the Institute and were removed from their positions of trust); (b) with regard to the requests for revocation of the registration of INTN Sindical, the authorities merely requested verification of compliance with section 292 of the Labour Code, which establishes the minimum number of members, since they were aware that many members had withdrawn from the union and they had confirmed that INTN Sindical did not have the minimum number of members required; in that connection, the Institute states that it will request revocation of the registration of any union that does not meet the criteria established by law; (c) with regard to the alleged dismissal without an administrative investigation of two members of INTN Sindical who enjoyed security of tenure (Ms Delia Ríos and Ms Silvia Vidal), the Institute states that they held positions of trust (Internal Auditor and Administrative and Financial Officer, respectively); therefore, pursuant to the Public Service Act, these posts were filled at the discretion of the highest authority (the Institute also emphasizes that: (i) these public servants had been seconded to the Institute; therefore, once dismissed, they went back to work at their original institutions; (ii) both women appealed before the Court of Auditors, which dismissed the appeal; and (iii) these public servants, who had been members of the previous administration, are attempting to discredit the current one); (d) with regard to the allegation that the transfer of several public servants (Ms Nancy Melgarejo, Ms Carmen Mallorquín, Ms Delfina de Franco, Mr Mario Leiva, Ms Trini Jimenez, Ms Rita Rodríguez, Mr Miguel Ángel Barrios, Ms Susana Cabrera and Mr Ricardo Ramírez) constitutes anti-union harassment, the Institute indicates the transfers were carried out in full compliance with the law, which empowers the authority to assign new responsibilities to the Institute's employees; it also denies the complainant's allegation that there are isolated or unhealthy offices; (e) with regard to the administrative investigations opened, the Institute reports that they were prompted by reports of irregularities and that in each case, an inquiry was ordered in order to assign responsibility in accordance with the law (in the case of Mr Mario Leiva, the examining magistrate in the public prosecution service ordered his dismissal for serious misconduct; Mr Leiva appealed before the Court of Auditors and the proceedings are ongoing pending a final judgment); (f) with regard to the allegation of intimidation directed against the General Secretary of INTN Sindical, the Institute categorically denies that he was threatened and emphasizes that he has produced no evidence in support of his complaint; and (g) with regard to the allegation that Decision No. 064/2014 constituted a violation of freedom of expression, the Institute indicates that the decision regulated the posting of announcements, notices and other documents on blackboards or notice boards and that there was no effort to restrict the right to freedom of expression, but only to ensure that communication was better organized.

- 475.** With respect to the complaint that the complainants brought before the human rights committees of the two chambers of Congress, the Institute states that its representatives participated in all of the meetings held and replied to all of the committees' questions regarding the complaints made by INTN Sindical. Furthermore, the Government states that there is no record showing that the complainants brought administrative proceedings concerning the complaint before the administrative labour authority.
- 476.** Lastly, the Institute categorically denies the allegation that it is unwilling to grant the request for the signing of a collective agreement and states that its General Directorate is more than willing to sign such an agreement since it would include benefits to be enjoyed by all of the Institute's employees. However, as this entails an extremely broad and sensitive document, (since each of its provisions would have to be brought into line with the legislation), the draft is still under consideration.

C. The Committee's conclusions

- 477.** *The Committee notes that the complaint concerns allegations of anti-union discrimination (campaign by the Institute's authorities promoting the withdrawal of members of INTN*

Sindical and other acts of anti-union discrimination against its officers and members); requests for revocation of the union's registration; and refusal to bargain collectively.

478. *Concerning the allegations of anti-union discrimination, the Committee notes that: (a) with regard to the allegation that members of INTN Sindical who enjoyed security of tenure were dismissed without an administrative investigation, the Government indicates that the posts of two of the aforementioned public servants were positions of trust filled at the discretion of the authorities; that, once dismissed, they went back to work at their original institutions; and that the Court of Auditors dismissed their appeal; (b) with regard to the allegations of anti-union transfers, the Government indicates that they were carried out in full compliance with the law, which empowers the authority to assign new responsibilities to the Institute's employees; (c) the Government denies the allegation that the General Secretary of INTN Sindical was subjected to intimidation or threats and states that he has produced no evidence of such actions; (d) with regard to the administrative investigations opened, the Government indicates that they were prompted by reports of irregularities; that in each case, an inquiry was ordered in order to assign responsibility; and that, in the case of Mr Mario Leiva, the examining magistrate in the public prosecution service ordered his dismissal for serious misconduct; Mr Leiva appealed before the Court of Auditors and the proceedings are ongoing pending a final judgment; the Committee requests the Government and the complainant to keep it informed regarding the outcome of Mr Mario Leiva's appeal; and (e) with regard to the allegation that a campaign was carried out from July to December 2012 in order to force over half of INTN Sindical's members to withdraw, the Government maintains that after the General Director (who had allegedly caused the withdrawal) was removed from office, the members who had withdrawn from the union did not re-join it.*
479. *Having taken due note of the foregoing, the Committee notes that the Government's general statement that there is no record showing that the complainants brought administrative proceedings concerning the complaint before the administrative labour authority is inconsistent with various specific references in the documents provided by the complainant, including notes sent to the administrative authority alleging anti-union harassment (for example, as reflected in the minutes of the tripartite meetings, which were certified by ministerial authorities) and letters submitted as part of the complaint, in which INTN Sindical reported acts of anti-union discrimination to the Institute and the Ministry of Labour, Employment and Social Security. In that regard, the Committee would like to recall that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 835]. In light of this principle and of the conflicting information received from the parties with respect to the various allegations of anti-union discrimination, the Committee invites the complainant, if it so desires, to provide the competent authorities with the detailed additional information in its possession so that they can investigate any remaining allegations of anti-union discrimination and, if these allegations are confirmed, ensure that the appropriate penalties are imposed and compensation provided. The Committee requests the Government and the complainant to keep it informed in this respect. If the complainant does not provide the additional detailed information referred to, the Committee will not pursue its examination of this allegation.*
480. *Concerning the allegation that the Institute's General Directorate requested revocation of the registration of INTN Sindical, the Committee takes due note of the Government's statement that INTN Sindical is still registered although the Institute: (i) maintains that its requests were prompted by the fact that INTN Sindical did not have the minimum number of members required; and (ii) states that it will request revocation of the registration of any union that does not meet the criteria established by law (section 292 of the Labour Code). On this point, the Committee recalls that in Case No. 3019, it examined specific allegations*

on the way in which section 292 of the Labour Code may undermine the rights of public sector workers' organizations and noted that 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 and that this could, in effect, undermine the right of public sector employees to establish organizations of their own choosing. The Committee refers to its conclusions and recommendations in this case, in which it drew the legislative aspects to the attention of the Committee of Experts on the Application of Conventions and Recommendations and requested the Government to hold consultations with the social partners concerned in order to ensure that this provision did not, in effect, undermine the right of public sector employees to establish organizations of their own choosing [see 381st Report, Case No. 3019, para. 535].

- 481.** *With respect to the alleged refusal to bargain collectively, the Committee notes that, according to the Government, the Institute is more than willing to sign the collective agreement and is considering the draft that has been submitted. The Committee encourages the Government to promote collective bargaining so that a collective agreement can be signed at the Institute in the near future.*
- 482.** *Concerning the allegation that freedom of expression is restricted pursuant to Decision No. 064/2014, while noting the Government's statement that this instrument's purpose is not to restrict the right to freedom of expression, but rather to ensure that communication is better organized, the Committee observes that the decision requires the General Directorate's approval before any announcement or other document can be posted. In that connection, the Committee recalls that the publication and distribution of news and information of general or special interest to trade unions and their members constitutes a legitimate trade union activity and the application of measures designed to control publication and means of information may involve serious interference by administrative authorities with this activity. The Committee recalls that the 1970 International Labour Conference resolution concerning trade union rights and their relation to civil liberties places special emphasis on the civil liberties essential for the normal exercise of trade union rights, including the right to freedom of opinion and expression and, in particular, the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media. The Committee hopes that in light of the principles of freedom of association, the concerned parties will address the issue of the use of communication channels for trade union purposes during the aforementioned collective bargaining.*

The Committee's recommendations

- 483.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee invites the complainant, if it so desires, to provide the competent authorities with the detailed additional information in its possession so that they can investigate any remaining allegations of anti-union discrimination and, if these allegations are confirmed, ensure that the appropriate penalties are imposed and compensation provided. The Committee requests the Government and the complainant to keep it informed of developments in this respect and of the outcome of the appeal brought by Mr Mario Leiva. If the complainant does not provide the additional detailed information referred to, the Committee will not pursue its examination of this allegation.*

- (b) The Committee encourages the Government to promote collective bargaining so that a collective agreement can be signed at the Institute in the near future. The Committee requests the Government to keep it informed in this respect.*

CASE No. 3069

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

**Complaint against the Government of Peru
presented by
the Union of Worker Officials of the Antapaccay Mining
Company (SITRAMINA)**

***Allegations: Dismissal of 35 founding members
of the complainant organization and acts of
anti-union interference by a mining company***

- 484.** The Committee 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 833–854].
- 485.** The complainant organization sent additional information in a communication dated 1 June 2015.
- 486.** The Government sent its observations in communications dated 13 July, 5 August and 23 September 2015, and 24 February and 1 June 2016.
- 487.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 488.** At its March 2015 meeting, the Committee made the following recommendation [see 374th Report, para. 854]:

The Committee requests the Government to inform it of any administrative or judicial decision issued in relation to this case, in order to examine, with all the relevant information, the allegations concerning the dismissal of the 35 founding members of the complainant union and acts of anti-union interference, including pressure to give up trade union membership.

**B. The complainant's additional allegations
and information**

- 489.** In a communication of 1 June 2015, the complainant organization states that: (i) the Regional Directorate of Labour and Employment Promotion of Cusco (Cusco Regional Labour Directorate), by Executive Decision No. 024-2015, overturned the previous decisions of the labour inspectorate which had established a violation of the social and labour rights of the 35 members of the Union of Worker Officials of the Antapaccay Mining Company (SITRAMINA); and (ii) on the basis of the aforementioned executive decision, the mining company resumed its intimidation of the remaining members of the union, thereby securing

four new resignations. The complainant also refers to the judicial proceedings in progress, indicating that: (i) a first-instance ruling was issued in favour of Mr Joel Humberto Hernández Tejada, Mr Ángel Gilbert Aparicio Arispe, Mr David Antero Tito Flores, Mr Walter Gusmaldo Chirinos Herrera and Mr Cosme Bayona Carazas, leaders and founding members of the union who were dismissed after refusing to give up their union membership; (ii) after the mining company filed an appeal, a second-instance ruling was issued in December 2014 reversing the initial court decision; (iii) the workers requested advance implementation of the first-instance ruling (precautionary measures), as a result of which they were reinstated in their posts on 11 December 2014; (iv) despite the fact that the precautionary measures were non-appealable and that the five cases were identical, the company succeeded in having one of the five provisional reinstatements cancelled, three were upheld and a decision is still pending in the fifth case; and (v) in response to the second-instance ruling reversing the initial court decision, the union filed a constitutional complaint before the Constitutional Court.

C. The Government's reply

- 490.** In a communication dated 13 July 2015, the Government states that the National Labour Inspection Supervisory Authority (SUNAFIL), the central authority of the labour inspection system, will carry out an inspection at the mining company in order to look into the alleged non-compliance with the labour regulations. The abovementioned communication is accompanied by a number of documents from the Ministry of Labour and Employment Promotion (Ministry of Labour), especially two letters from the Director-General for Labour Inspection Policies, both dated 5 April 2015, indicating that: (i) anti-union acts at the mining company gave rise to an infringement report (No. 022-2014-MTPE/2/16) issued by the Labour and Employment Promotion Area Office of the Alto Andinas-Sicuni Provinces, confirmed by a decision of the Cusco Regional Labour Directorate (No. 09-2004-GR-Cusco/DRTPE-OZTPEEEA); (ii) further to an appeal filed by the mining company, the Cusco Regional Labour Directorate initially overturned the aforementioned decision (by Executive Order No. 032-2014-GR-DRTPE-DPSCL-Cusco), on the grounds that no account had been taken of the mining company's appeal; (iii) the Alto Andinas-Sicuni Labour and Employment Promotion Area Office upheld the proposed fine by means of a second infringement report (No. 015-204-GR-Cusco/DRTPE-OZTPEE); (iv) the aforementioned second report was declared null and void by the Dispute Prevention and Settlement Department at the Cusco Regional Labour Directorate (by Executive Order No. 039-2014-GR-DRTPE-DPSCL-Cusco); (v) the Area Office again confirmed the proposed penalty (Area Decision No. 001-2015-GR-Cusco/DRTPE-OZTPEEEA), on the grounds that it considered that the mining company's arguments did not invalidate the proposed fines; (vi) the mining company again filed an appeal; (vii) the affected union expressed its concern to the Ministry of Labour at the fact that the Cusco Regional Labour Directorate had not succeeded in imposing the penalty corresponding to the infringements established by the labour inspectorate; (viii) there is evidence of flaws in the handling of the infringement proceedings which might affect the interests of the workers who have filed appeals; and (ix) in view of the above, even though, under the laws on decentralization, the Cusco Regional Labour Directorate has competence in this matter, the Director-General for Labour Inspection Policies at the Ministry of Labour recommends that the Under-Ministry of Labour duly inform the Cusco Regional Labour Directorate and SUNAFIL, in its capacity as central labour inspection authority, so that the corresponding remedial measures can be taken.
- 491.** In a communication dated 5 August 2015, the Government states that: (i) the Deputy Minister of Labour forwarded to SUNAFIL the letter of 5 April 2015 from the Director-General for Labour Inspection Policies; (ii) on 14 May 2015, on the basis of the communication from the Deputy Minister, SUNAFIL requested detailed information from the Cusco Regional Labour Directorate on the administrative infringement proceedings referred to above. In a communication of 23 September 2015, the Government forwards a

new communication from SUNAFIL in which the central inspection authority indicates that it will carry out an inspection in relation to the events described in the complaint in October 2015.

492. In communications dated 24 February and 1 June 2016, the Government: (i) forwards Executive Decision No. 024-2015 of 8 May 2015 of the Cusco Regional Labour Directorate which again cancels the penalty imposed on the mining company (the executive decision cancels the penalty on the grounds that there is insufficient objective, timely and conclusive evidence that the dismissals of the five workers – involving the loss of positions of trust and the renunciation of union membership by 28 workers and the request by 17 of them that the union registration should be cancelled – constituted acts of anti-union discrimination); (ii) indicates that, on 19 February 2016, SUNAFIL stated that it had decided not to undertake the inspection relating to the mining company so that the Cusco Regional Labour Directorate could pursue its investigations in this respect, albeit recommending that the Cusco Regional Labour Directorate should undertake a new inspection of the mining company with regard to the alleged anti-union acts; (iii) indicates that the Cusco Regional Labour Directorate considers, with regard to new allegations of pressure to give up union membership, that no acts of anti-union harassment have been established; (iv) communicates the ruling of 4 December 2014 of the High Court of Justice of Cusco overturning the first-instance ruling which had described the dismissals of five of the union’s leaders and founding members as anti-union in nature; and (v) forwards the information supplied by the High Court of Cusco indicating that there are no contradictions in the judicial decisions relating to the five dismissed workers and that the precautionary measures in their favour shall remain in force until a ruling is issued by the Constitutional Court on the appeal filed by the union. In conclusion, the Government states it appears from the documentation obtained that the mining company does not seem to have committed any acts with the aim of interfering with freedom of association and that, as guarantor of the observance of labour rights in Peru, the Government will duly coordinate with the respective bodies and monitor the outcome of the inspection investigations, which it will communicate to the Committee in due course.

D. The Committee’s conclusions

493. *The Committee recalls that the present case refers to allegations of acts of anti-union interference by a mining company in relation to the establishment of a trade union, including pressure to give up union membership which led 28 of the 35 founding members to resign from the union and to the dismissal of five union leaders and founding members (Mr Joel Humberto Hernández Tejada, Mr Ángel Gilbert Aparicio Arispe, Mr David Antero Tito Flores, Mr Walter Gusmaldo Chirinos Herrera and Mr Cosme Bayona Caraza) who reportedly refused to sign a letter whereby they would give up their union membership and request the invalidation of the union’s registration.*

494. *The Committee notes the additional allegations and information from the complainant organization, to the effect that: (i) the third infringement report drawn up by the labour inspectorate in 2014 against the mining company was again quashed in 2015 by the Cusco Regional Labour Directorate, whereupon the acts of harassment resumed and another four members of the union gave up their membership; (ii) in December 2014, the High Court of Justice of Cusco overturned the court decision which had declared the dismissals of the five founding members to be anti-union in character, whereupon the union filed an appeal with the Constitutional Court; and (iii) on the basis of the second-instance ruling, the company requested the revocation of the precautionary measures whereby the five workers had been provisionally reinstated; this request gave rise to conflicting decisions on the part of the judiciary.*

495. *The Committee also notes the observations and information supplied by the Government, to the effect that: (i) the Directorate-General for Labour Inspection Policies at the Ministry of Labour considered in April 2015 that there were flaws in the handling of the infringement proceedings against the mining company by the Cusco Regional Labour Directorate which justified an examination by the central inspection authority, SUNAFIL; (ii) the penalty imposed on the mining company by the labour inspectorate in 2014 was cancelled by a decision of 8 May 2015 of the Cusco Regional Labour Directorate, on the grounds that there was insufficient evidence in the initial decision that anti-union acts had occurred; (iii) with regard to the new allegations of anti-union acts, the Cusco Regional Labour Directorate stated in January 2016 that it considered that no acts of harassment had occurred; (iv) in a communication of February 2016, SUNAFIL indicated that it had decided not to conduct investigations since this was a matter for the Cusco Regional Labour Directorate, albeit recommending that the Directorate in question should conduct a new inspection at the mining company in relation to the reported events; and (v) further to the ruling of the High Court of Cusco of 4 December 2014 overturning the first-instance decision which established the anti-union character of the dismissals, the courts confirmed that the precautionary measures issued in favour of the five workers remain in force until the Constitutional Court issues a definitive ruling on their dismissal. The Committee notes that the Government concludes that the documentation obtained shows that the mining company does not appear to have committed any acts aimed at interfering with freedom of association and that, as guarantor of the observance of labour rights in Peru, the Government will duly coordinate with the respective bodies and monitor the outcome of the inspection investigations, which it will communicate to the Committee in due course.*
496. *In the light of the above, the Committee observes that the infringement proceedings instituted by the labour inspectorate, in relation to the events described in the present complaint, were cancelled in May 2015 by the Cusco Regional Labour Directorate on the grounds that the infringement reports did not contain sufficient evidence of the existence of anti-union acts and that, as regards the new allegations of pressure to give up union membership, the Cusco Regional Labour Directorate considered that no acts of anti-union harassment had been established. In this respect, the Committee also notes that: (i) the information supplied by the Government shows that the abovementioned cancellation was the third in relation to the events described in the present complaint, the labour inspectors responsible for the investigation having drawn up three successive infringement reports and three corresponding proposals to impose fines; (ii) the Directorate-General for Labour Inspection Policies at the Ministry of Labour considered in April 2015 that there was evidence of flaws in the handling of the infringement proceedings which could affect the interests of the workers and forwarded the file to SUNAFIL so that the appropriate remedial action could be taken; and (iii) SUNAFIL stated in February 2016 that it would not be taking action in this matter so that the Cusco Regional Labour Directorate could pursue its investigations, albeit recommending that the Directorate in question should undertake a new inspection in relation to the alleged anti-union acts.*
497. *In the light of the above, the Committee requests the Government to provide information on the additional inspection at the mining company, recommended by SUNAFIL, and also on the outcome thereof. Moreover, the Committee recalls that it may often be difficult, if not impossible, for workers to furnish proof of an act of anti-union discrimination of which they have been the victim. This shows the full importance of Article 3 of Convention No. 98, which provides that machinery appropriate to national conditions shall be established, where necessary, to ensure respect for the right to organize [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 819]. In this respect, observing that the labour inspection system in Peru has been subject to a process of decentralization and regionalization and that its coordinating authority, SUNAFIL, is a recently created body, the Committee recalls that the Government has the obligation to ensure respect for freedom of association throughout the country.*

498. *With regard to the court proceedings relating to the dismissal of five of the founding members and leaders of the union, the Committee notes that the workers have been provisionally reinstated and that their reinstatement remains valid until the Constitutional Court issues a definitive ruling in this case. The Committee also notes that the High Court of Justice of Cusco, by a ruling of 4 December 2014, overturned the first-instance ruling which had found the dismissals to be anti-union in nature and that, further to the second-instance ruling, the union filed a constitutional complaint before the Constitutional Court. In this respect, the Committee observes that the first-instance court quashed the dismissals on the grounds that the trade union immunity of the five union leaders and founding members had been violated since they had been dismissed a few days after notifying the labour administration of the establishment of the union and on the grounds that the aforementioned workers, whose dismissal letters referred to a loss of trust, had never occupied positions of trust. The Committee further observes that the High Court considered that the first-instance court had failed to demonstrate that the employer had been aware of the establishment of the union at the time of the dismissals. The Committee also notes that the grounds that supposedly justified the dismissal of the workers were not examined in the High Court. In this respect, the Committee has drawn attention to the Workers' Representatives Recommendation, 1971 (No. 143), which recommends, as one of the measures that should be taken to ensure the effective protection of workers' representatives, the adoption of provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was in fact justified [see **Digest**, op. cit., para. 830]. The Committee requests the Government to keep it informed of the outcome of the complaint filed with the Constitutional Court.*

The Committee's recommendations

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

- (a) The Committee requests the Government to provide information on the additional inspection at the mining company, recommended by SUNAFIL, and also on the outcome thereof.*
- (b) The Committee requests the Government to keep it informed of the outcome of the appeal filed with the Constitutional Court.*

CASE NO. 3160

DEFINITIVE REPORT

Complaint against the Government of Peru

presented by

- **the Autonomous Confederation of Workers of Peru (CATP) and**
- **the United National Union of Workers at the National Tax Administration Superintendency (SINAUT–SUNAT)**

Allegations: Legislative provisions which restrict the collective bargaining rights of public sector workers

- 500.** The complaint is contained in a communication dated 16 July 2015 from the Autonomous Confederation of Workers of Peru (CATP) and the United National Union of Workers at the National Tax Administration Superintendency (SINAUT–SUNAT).
- 501.** The Government sent its observations in a communication dated 23 February 2016.
- 502.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

- 503.** In their communication of 16 July 2015, the complainant organizations allege that the national legislation violates the right to collective bargaining of workers at the National Tax Administration Superintendency (SUNAT) (hereinafter: Tax Superintendency) in preventing the negotiation of pay increases and other benefits.
- 504.** The complainant organizations emphasize that the first paragraph of the ninth final supplementary provision of Act No. 29816 (SUNAT Reinforcement Act) provides that processes of collective bargaining or arbitration in labour matters shall be governed by the respective legal standards and budget regulations in force. They recall in this respect that the legislation in force is Act No. 30281 (Public Sector Budget Act for 2015), section 6 of which prohibits adjustments or increases in pay or other benefits – reproducing the terms of the budget laws that have been in force for over 20 years (the complainants point out that these laws prohibit any kind of increase in pay or benefits, including as a result of arbitration).
- 505.** Moreover, the complainant organizations emphasize that the second paragraph of the abovementioned ninth final supplementary provision of Act No. 29816 provides that in negotiation and arbitration processes a maximum 1 per cent of the annual increase in resources by comparison with the previous year shall be considered as the sole source of financing for any increase, benefits and/or improvements in conditions of work and employment. The complainants consider that this paragraph can be interpreted in two ways: (i) as imposing a limit on negotiations concerning non-pay-related conditions; or (ii) (in contradiction to the first paragraph which refers to the budget legislation) as allowing pay negotiations but with a limit not exceeding 1 per cent of the annual increase in SUNAT's own resources – a limit which, according to the complainants, would constitute a derisory amount (compared with the volume of SUNAT's resources and outputs) and also an excessive restriction on collective bargaining. In this respect, the complainants object to the fact that the parties concerned do not negotiate what percentage of own resources can be the

subject of negotiation (this is defined by the legislation). They also consider that this limitation would also lack justification as an exceptional adjustment measure since it is not based on any exceptional situation but is a permanent restriction.

506. The complainant organizations indicate that this violation of the right to collective bargaining does not constitute an isolated case but is a recurrent phenomenon on which the ILO supervisory bodies have expressed their views. The complainants allege that Act No. 30057 of 2013 (Civil Service Act) permanently consolidates the limitations on collective bargaining relating to remuneration for the whole public sector. They recall in this respect that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has pointed out that such limitations are contrary to Conventions Nos 98 and 151 and claim that the Government has not taken any steps so far to implement the Committee's recommendations. Furthermore, they stress that the Government and the authorities concerned have also not implemented the Committee's recommendations in Cases Nos 2690 and 2816. In these cases, faced with the refusal of the Tax Superintendency to negotiate financial conditions or refer the dispute to arbitration, the Committee: (i) in its 357th Report (June 2010), emphasized that the impossibility of negotiating pay increases on an ongoing basis is contrary to the principle of free and voluntary negotiation and asked the Government to promote appropriate mechanisms so that SINAUT–SUNAT and the Tax Superintendency might conclude a collective agreement; and (ii) in its 367th Report (March 2013), recommended that the Government establish a tripartite dialogue round table as a means of improving the collective bargaining system in the public administration and overcoming the difficulties and problems encountered in practice.

507. The complainant organizations denounce the fact that, far from these problems having been solved in the negotiations from 2010 to 2013, the Tax Superintendency has persisted in committing acts of bad faith in collective bargaining: delays at the start of negotiations, failure to attend direct negotiation or conciliation meetings convened by the labour authority and failure to formulate proposals, claiming that it was prohibited under the legislation to adopt pay increases or other benefits. As a result, the negotiations failed to reach a successful conclusion after several months of fruitless meetings. The complainants also indicate that the Tax Superintendency committed anti-union acts during the negotiations held in 2010–11, restricting the use of institutional email for union purposes and instituting disciplinary proceedings against union leaders for the improper use of email in disseminating information through this medium on the progress of collective bargaining and union activities (in its 362nd Report (2011), the Committee recommended that the question of the use of email by the union should be the subject of negotiation between the parties).

508. Furthermore, the complainants allege that, even though the Tax Superintendency claims that it is unable to negotiate financial benefits with SINAUT–SUNAT (the majority union) because this is prohibited by law, it has in fact negotiated financial benefits with minority unions, with the aim of undermining SINAUT–SUNAT.

B. The Government's reply

509. In its communication of 23 February 2016, the Government forwards the opinions issued by the National Civil Service Authority (SERVIR), the Tax Superintendency and the Deputy Minister of Labour in relation to the allegations made by the complainant organizations.

510. As regards the allegation that, under Act No. 30057 the negotiation of pay increases is prohibited, SERVIR emphasizes that this Act regulates the scope of collective rights for the public sector with the aim of having a uniform regulatory framework which: prevents distortions with regard to pay negotiations (which means that only certain workers may engage in pay negotiations); prevents any disorder with regard to pay resulting from different rules for pay negotiations depending on which labour regulations the public servants

concerned are subject to (which has meant that civil servants with similar duties or posts have different levels of pay); and establishes objective technical criteria relating to pay increases and applies the principle of budgetary provision.

- 511.** The Tax Superintendency indicates, with regard to the allegation of failure to implement the recommendations of the CEACR concerning collective bargaining with SINAUT–SUNAT: (i) as regards the collective bargaining for 2008–09, that the union decided to refer the dispute to arbitration and that, further to an award being issued against the Tax Superintendency, that body filed an appeal with the courts to challenge the award; (ii) as regards the list of demands for 2010–11, negotiations were held without any violation of the principle of free and voluntary bargaining, taking into account, in relation to the financial aspects, that the Budget Act and Act No. 29816 set limits on adopting increases in financial benefits; and (iii) as regards the allegation that the Tax Superintendency refuses to negotiate pay increases despite having concluded collective agreements in the past with other trade unions to which such increases were indeed granted, the Tax Superintendency emphasizes that it has always acted in strict conformity with the applicable laws, and points out that the prohibition contained in the Civil Service Act (No. 30057) does not apply to the Tax Superintendency (whose Act No. 29816 provides for the negotiation of increases and benefits up to the equivalent of 1 per cent of the annual increase in resources). The Tax Superintendency emphasizes that in 2011, 2012 and 2013 it concluded collective agreements with various trade unions with due regard for the regulatory framework of Act No. 29816; accordingly, the possibility exists of concluding a collective agreement with SINAUT–SUNAT in the future.
- 512.** The Deputy Minister for Labour recalls the applicable legal provisions in his observations, indicating that, while the ninth final supplementary provision of Act No. 29816 provides for the possibility of negotiating increases in benefits up to a maximum of 1 per cent of the annual increase in resources, section 6 of Act No. 30281 (Public Sector Budget Act for 2015) prohibits any adjustment or increase in pay or other benefits. The Deputy Minister also indicates that Act No. 29816 and Act No. 30281 have not been the subject of any appeals claiming them to be unconstitutional (and so these Acts are presumed to be constitutional) and that, in examining the constitutionality of Act No. 30057 of 2013 (Civil Service Act), further to a challenge to the chapter on collective bargaining, the Constitutional Court confirmed the said Act as being constitutional in part.
- 513.** In the light of all the abovementioned considerations, the Government concludes that: (i) the ninth final supplementary provision of Act No. 29816 does not violate the right to collective bargaining, since the Tax Superintendency participated in negotiations and reached agreements with a number of unions; (ii) the Civil Service Act (No. 30057) and its implementing regulations establish provisions on collective bargaining in the public sector with the aim of having a uniform regulatory framework that prevents disorder with regard to pay, establishing objective technical criteria; (iii) the Constitutional Court confirmed Act No. 30057 as being constitutional in part (it did not declare it to be unconstitutional as regards collective bargaining); and (iv) with regard to Act No. 30281, no appeals claiming it to be unconstitutional have been filed.

C. The Committee's conclusions

- 514.** *The Committee observes that the complaint is concerned with allegations that certain legislative provisions restrict the collective bargaining rights of workers at the National Tax Superintendency and in the public sector in general.*
- 515.** *As regards the legislation applicable to the Tax Superintendency and to the negotiations with SINAUT–SUNAT, the Committee duly notes that, according to the Tax Superintendency, the ninth final supplementary provision of Act No. 29816 permits the*

collective negotiation of pay increases and benefits (within a limit of 1 per cent of the annual increase in the Superintendency's own resources) and that, having concluded agreements with a number of other unions in recent years, the possibility exists of signing a collective agreement with SINAUT–SUNAT in the future. The Committee recalls that, in previous cases in which difficulties of collective bargaining with the Tax Superintendency were alleged, the Committee underlined the importance of the parties being able to negotiate on pay-related matters and that appropriate mechanisms in this respect should be promoted [see Case No. 2690, 357th Report, paras 941–948, and Case No. 2816, 367th Report, paras 1001–1007]. As regards the complainants' allegation that the limit of 1 per cent of the annual increase in resources is derisory and non-negotiated, the Committee recalls, in general, that the possibility of setting an overall fixed budget allocation in the context of which the parties can negotiate finance-related clauses is compatible with the principles of collective bargaining provided such clauses leave adequate scope for collective bargaining. The Committee also recalls that, in the context of Case No. 2816, having noted the difficulties and problems faced by collective bargaining in the public administration, the Committee considered that these difficulties and problems should be addressed through social dialogue and invited the Government to establish such dialogue as a means of improving the collective bargaining system in the public administration and surmounting the existing difficulties and problems, including with regard to remuneration [see 367th Report, para. 1006]. Lastly, as in previous cases, the Committee trusts that the Government will take the necessary steps to promote voluntary, good-faith negotiation between the Tax Superintendency and SINAUT–SUNAT, so that they can sign a collective agreement in the near future, including with regard to pay and other benefits.

- 516.** *As regards the allegations of restrictions on collective bargaining in the public sector, through the prohibition on the negotiation of pay increases or other financial benefits contained in the legislation governing the public sector budget and the Civil Service Act, the Committee observes that the Committee of Experts on the Application of Conventions and Recommendations (CEACR), in the context of Peru's application of Conventions Nos 98 and 151, noted as part of its examination of the same issue that the Constitutional Court of Peru, in a ruling of 3 September 2015, on the basis of Conventions Nos 98 and 151 and also the corresponding comments of the ILO supervisory bodies: (i) declared unconstitutional the prohibition on the collective negotiation of pay increases contained in the legislation governing the public sector budget for 2012, 2013, 2014 and 2015; and (ii) urged the National Congress to adopt regulations concerning collective bargaining in the public sector. The CEACR urged the Government to take the necessary steps, in consultation with the trade union organizations concerned, to review the Civil Service Act of 2013 and also all the relevant regulations so that public sector employees not engaged in the administration of the State can exercise their right to bargain collectively regarding financial and pay-related matters in accordance with Convention No. 98 and so that, in relation to the application of Convention No. 151, public employees engaged in the administration of the State can participate in determining conditions of employment, including pay and other matters of financial consequence. In view of the above and the fact that Peru has ratified Conventions Nos 98 and 151, the Committee invites the Government to keep the CEACR informed with regard to the legislative aspects of the case.*
- 517.** *The Committee observes that the allegation of anti-union acts in relation to the use of email is the subject of Case No. 2816, which is under examination by the Committee and to whose conclusions and recommendations reference is made.*

The Committee's recommendations

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

- (a) *The Committee trusts that the Government will take the necessary steps to promote voluntary, good-faith negotiation between the Tax Superintendency and SINAUT–SUNAT, so that they can sign a collective agreement in the near future, including with regard to pay and other benefits, and reiterates its invitation to the Government to address through social dialogue the difficulties and problems relating to collective bargaining in the public administration, including with regard to pay.*
- (b) *In view of the fact that Peru has ratified Conventions Nos 98 and 151, the Committee invites the Government to keep the CEACR informed regarding the legislative aspects of the case, relating to the provisions that exclude pay and other matters of financial consequence from collective bargaining or participation on the part of public employees.*

CASE No. 3159

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

Complaint against the Government of the Philippines presented by the Trade Federation for Drugs/Chemicals/Petroleum – Federation of Free Workers (TF 3)

Allegations: The complainant organization alleges anti-union practices, including union busting, mass termination of contracts and violations of the existing collective agreement, carried out by the company against the Boie Takeda Chemicals Employees Association – Federation of Free Workers (BTCEA–FFW) and allowed by the authorities

- 519.** The complaint is contained in a communication from the Trade Federation for Drugs/Chemicals/Petroleum – Federation of Free Workers (TF 3) dated 25 August 2015.
- 520.** The Government forwarded its response to the allegations in communications dated 31 May and 20 October 2016.
- 521.** The Philippines 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

- 522.** In a communication dated 25 August 2015, the complainant organization TF 3 wishes to bring to the attention of the Committee the anti-union practices carried out against the union Boie Takeda Chemicals Employees Association (BTCEA–FFW), by Takeda Pharmaceuticals Philippines Inc. (TPPI, hereafter: the company)/Takeda Healthcare Philippines Inc. (THPI, hereafter: the new corporation), owned by the homonymous mother company in Japan. The complainant denounces that the anti-union practices were legitimized and allowed with impunity by existing laws and practices of the Securities and Exchange Commission (SEC). In particular, the company circumvented the law of the SEC by registering a new corporation, in order to get rid of the BTCEA–FFW as well as to renege its obligations under the existing collective bargaining agreement of the parties covering the period from 1 January 2013 to 31 December 2017.
- 523.** The complainant indicates that the BTCEA–FFW has been in existence since 1991, and that at that time the union had embedded the then different enterprise name in its designation. The BTCEA–FFW has since entered into several collective bargaining agreements. The current collective agreement concluded with the company covers the period from 1 January 2013 to 31 December 2017.
- 524.** According to the complainant, in September 2011, the mother company bought a pharmaceuticals business with headquarters in Switzerland and an existing branch in the Philippines, which was unorganized, unlike the company. In 2013, the union BTCEA–FFW manifested the willingness with management to include the employees of the newly acquired business as part of the collective bargaining unit of the company considering the fact that they were now under the same management. However, the company management set it aside and advised the union to wait for the full integration. In the observance of harmonious relations, the union conceded.
- 525.** The complainant states that, in May 2014, the BTCEA–FFW negotiated for their salary increase for the years 2014 and 2015. Due to failure of the parties to enter into an agreement, the BTCEA–FFW declared a bargaining deadlock and sought a third-party intervention before the National Conciliation and Mediation Board (NCMB). When conciliation failed, both parties agreed to submit the issue before the voluntary arbitrator. While the case was still pending before the latter, there was an initiative that resulted in the settlement of the issue submitted before voluntary arbitration. The respondent (the company), through the HR Director, offered a salary increase across the board for 2014 and for 2015. This offer was accepted by the BTCEA–FFW through a compromise agreement (attached to the complaint) since it was accepted by the majority of its members.
- 526.** The complainant alleges that, without the knowledge of the BTCEA–FFW, the company subsequently registered before the SEC a new corporation, which was claimed to be a subsidiary of another firm wholly owned by the mother company. The HR Director of the new corporation – one of the respondents in the case before the National Labor Relations Commission (NLRC) – is at the same time board member of the company and represented the latter during the mediation proceedings before the NCMB. According to the complainant, she has full knowledge and is privy to the information regarding the above acts of bad faith committed by the company that affected significantly the conditions and status of the BTCEA–FFW and its members including the blatant act of union busting and gross violation of the provisions of the parties' existing collective bargaining agreement, and clear violation of ILO Conventions Nos 87 and 98. On 29 January 2015, the HR Director sent an email addressed to all employees of the company informing them about a town hall meeting on 3 February 2015 to discuss the legal integration of the newly acquired business, which in fact refers to the announcement of the abolition of the union and the undue discontinuance of the existing collective bargaining agreement between the company and the union.

- 527.** The complainant further indicates that, on 3 February 2015, before the town hall meeting commenced, the then officers of the BTCEA–FFW namely, Cecilia Villarama (President), Ruth Garcia (Vice-President), Rossana Resurreccion (Secretary), Magdalena Buama (Treasurer), Erica Joy Antonio-Romualdo (Auditor) and Aurea Martin (PRO), were called for a closed-door meeting. They were informed by management that the company would cease its commercial operation effective 31 March 2015 and that thus the BTCEA–FFW would also cease to exist. Further, in order for all union members to continue their employment they would need to re-apply with the new corporation, failing which they would be terminated effective 31 March 2015 (PowerPoint slide included in the complaint). The same information was provided to all employees present at the town hall meeting. All employees of the company were forced to re-apply with the new corporation to continue their employment lest they would be terminated effective 31 March 2015. It was specified that all employees of the company who re-applied with the new corporation would retain their seniority rights and all benefits enjoyed while employed with the company, except their membership with the BTCEA–FFW and all matters relating to the union, the latter having supposedly ceased to exist effective 31 March 2015.
- 528.** The complainant states that the pro-forma employment offer given to all employees of the company on 3 February 2015 carries at the top of the form the names of both the company and the new corporation and at the bottom left of the form the company name and address, and reads as follows:

A new corporation ... will soon be distributing ... products in the Philippines and is currently hiring new employees. In this connection, we are pleased to inform you that you have the option to apply for an employment position with ... [the new corporation]. If you apply and ... [the new corporation] is interested to hire you, for a position similar to your current position in ... [the company], you will receive an employment offer, which includes a salary the same as or close to your current salary and the benefits outlined in the attached annex. ... [The new corporation's] offer will also include giving you full credit for the length of your service to the company when determining your length of service to ... [the new corporation]. However, the tax treatment of your compensation and benefits moving forward may vary depending on the tax laws and regulations applicable to your employment with ... [the new corporation]. If ... [the new corporation] extends you an employment offer and you accept the said offer, your employment relationship with the company will be deemed to have ended effective on the date you start your employment with ... [the new corporation] which is anticipated to be on 1 April 2015. Furthermore, because ... [the new corporation] is offering you employment without loss of your accrued length of service to the company and there is no employment termination by the company when you accept ... [the new corporation's] employment offer, you will not receive or be entitled to any separation pay, retirement plan benefit or any kind of separation-related payment or notice from the company as a result of your leaving the company to pursue employment with ... [the new corporation]. In the event that you apply for a position at ... [the new corporation] and you accept the employment offer that ... [the new corporation] extends to you in response to your application, but you subsequently decide not to pursue employment at ... [the new corporation], you will only be entitled to receive a resignation benefit pursuant to the company's Retirement Plan, and you will not receive or be entitled to any other separation pay or separation-related payment or notice from the company. Should you decide not to apply for an employment position at ... [the new corporation] or if you apply but ... [the new corporation] does not extend you an employment offer or if you do not accept ... [the new corporation's] employment offer in a timely manner, you will remain employed with the company, without prejudice to the right of the company to terminate your employment for any valid reason, such as cessation of operations of the company. Please signify your decision to apply or not to apply for an employment position at ... [the new corporation] by accomplishing the "Employee's Decision" portion in the next page and returning one signed original to the HR Director no later than 6 February 2015. In case you have any queries regarding the foregoing, please feel free to get in touch with the HR Director. Thank you.

- 529.** The complainant underlines the clear participation of the HR Director in the facilitation of the transfer of all employees of the company to the new corporation. Also, the above memorandum proves that all activities relating to the transfer of employees to the new corporation was done and facilitated by the company.
- 530.** The complainant adds that, on 4 February 2015, the union filed a notice of strike before the NCMB to vehemently protest against the above clandestine changes implemented by the company without its knowledge. The strike notice was anchored on the following grounds: (1) union busting; (2) mass/illegal termination; (3) violation of ILO Conventions Nos 87 and 98; and (4) gross violation of the provisions of the Collective Agreement. Seven conciliation meetings were held but no settlement was reached. After complying with the procedural requirements, the union went on strike in front of the company seat on 31 March 2015.
- 531.** The complainant denounces that – effective 1 April 2015 – while all employees who re-applied with the new corporation retained their seniority status and other benefits, the BTCEA–FFW was no longer recognized by the new corporation and all matters relating to it and its collective bargaining agreement were unjustly no longer recognized nor given effect.
- 532.** The complainant highlights what it considers to be the clear and evident similarities between the company and the new corporation. As shown below, the new corporation, as the company, continues to adhere to the same corporate philosophy carrying the name of the mother company. According to the complainant, during the Values Council orientation held on 10–11 August 2015, the PowerPoint slides (included in the complaint) presented to the participants who were all employees of the new corporation, clearly show that the new corporation claims continuity of the same corporate philosophy as that of the company. In fact, while the new corporation was only formed in 2014, it clearly claimed to the participants that its identity or current corporate philosophy was established in 2002 and that this is the management philosophy that has guided the mother company throughout its 230 years of service.
- 533.** The complainant further alleges that the new corporation continues to sell the same products as sold by the company (2014 price list or product list attached to the complaint), and that other similarities between the new corporation and the company include identical corporate business address, corporate contact numbers, the corporate logo and the corporate website. Moreover, the majority of the board of directors/officers of the company and the new corporation are the same persons. The appearance of business cards provided by the company and the new corporation, including emails referring to the same corporate website, is also identical. The complainant indicates that, on 15 June 2015, the union withdrew its case before the NCMB and subsequently filed the case before the NLRC for unfair labour practices including union busting, gross violation of the provisions of the existing collective bargaining agreement (1 January 2013–31 December 2017), violation of ILO Conventions Nos 87 and 98, moral and exemplary damages, and attorneys’ fees. The parties were about to submit their respective position papers on 1 September 2015.
- 534.** The complainant considers that the union busting and unfair labour practices happened through the SEC which practically facilitated the abuse perpetrated by the company against the BTCEA–FFW when it allowed the registration of the new corporation which was being formed by corporate officers of the company. Worse, the said registration became the springboard of corporate abuse as it was used to transfer the company’s business networks, assets, operations and all its employees to the new corporation.
- 535.** The complainant concludes that allowing such practice sets a dangerous precedent where any company can now go scot-free from its obligations with the union by just registering another new corporation that continues to sell the same products, and assumes all previous

corporate business networks and employees but can unjustly refuse to recognize the existing union of the original company and the parties' existing collective bargaining agreement by simply saying that they are now a "new" corporation. The BTCEA–FFW strongly seeks intervention and prays that its right to self-organization be respected, including that the existing union be continually recognized as the exclusive collective bargaining agent under the new corporation; and that the existing collective bargaining agreement concluded between the company and the union which is to expire on 31 December 2017 will still be given full force and effect.

B. The Government's reply

536. In its communications dated 31 May and 20 October 2016, the Government refers to the complainant's allegations of anti-union practices of the company against the BTCEA–FFW, in particular the circumvention of the law of the SEC by registering a new corporation, so as to get rid of the union as well as to renege on its obligations under the collective agreement in force.

537. The Government confirms that: (i) following a notice of strike filed by the BTCEA–FFW, a series of conciliation–mediation meetings before the NCMB took place but no settlement agreement was reached; (ii) on 1 April 2015, while all employees who re-applied with the new corporation retained their seniority status and other benefits, BTCEA–FFW and the collective agreement were no longer recognized by the management; (iii) on 15 June 2015, the union withdrew its case before the NCMB and filed a case before the NLRC for unfair labour practices with the Regional Arbitration Branch (RAB) (National Capital Region (NCR)) docketed as Case No. 06-07210-15.

538. In addition, the Government indicates that, in order to complement the arbitration track, the Regional Tripartite Monitoring Body (RTMB) of the DOLE–NCR made use in January 2016 of the Joint Assessment approach under the Labor Laws Compliance System (LLCS) to touch base with employees and management. According to the Government, employees stated that they have an existing union, that is the BTCEA–FFW, and a collective agreement that is still in effect until December 2017, insisted that there is a provision in the collective agreement according to which, in case of a merger, the existing union and collective agreement would still be recognized by the management, and considered that there was no need to form a new union since they already had an existing union and a collective agreement in force. The management representative, on the other hand, stated that the employees were free to form a union.

539. The Government indicates that, subsequently, the RAB–NCR Case No. 06-07210-15 was resolved by the NLRC Labour Arbiter on 29 February 2016 in favour of the BTCEA–FFW as follows: (a) the company, the new corporation and the HR Director were declared guilty of unfair labour practice, and were ordered to pay PHP100,000 (US\$2,007) nominal damages plus 10 per cent attorneys' fees; and (b) the union remains the bargaining agent of the employees in the bargaining unit it represents in the company, who remain members thereof in the new corporation under the collective agreement in force. The management filed an appeal against this decision on 10 May 2016, which is currently pending at the NLRC Fourth Division and docketed as LAC No. 05-001489-16.

C. The Committee's conclusions

540. *The Committee notes that, in the present case, the complainant organization alleges anti-union practices, including union busting, mass termination of contracts and violations of the existing collective agreement, carried out by the company against the BTCEA–FFW and allowed by the authorities. In particular, the Committee notes the allegation that the*

company allegedly circumvented the law of the SEC by registering a new corporation, in order to get rid of the existing union in the company, the BTCEA–FFW, as well as to renege its obligations under the collective bargaining agreement in force.

- 541.** Furthermore, the Committee notes with interest the initiative taken by the Government to verify, via the relevant RTMB, the situation on the ground in the new corporation, as well as the information gathered, notably the management’s position that the employees are free to form a union and the employees’ stand that there is no need to form a new union since they already have an existing union, the BTCEA–FFW, and a collective agreement in force.
- 542.** Concerning the allegations that the registration of a new corporation was not or not exclusively business related but wholly or partly for anti-union purposes, the Committee generally recalls that, while the genuine closure or restructuring of companies is not contrary to freedom of association principles, the closure or restructuring and the lay off of employees specifically in response to the exercise of trade union rights is tantamount to the denial of such rights and should be avoided [see Case No. 2745 (Philippines), 364th Report, June 2012, para. 985]. The Committee considers that, should the above allegations be true, they would be tantamount to a breach of the right of workers to establish and join organizations of their own choosing and of their right to bargain collectively and would constitute a serious violation of the principles of freedom of association. Moreover, the Committee observes that, according to article V, section 5 “Change of Status” of the collective agreement, the company agrees that in the event of change of status and/or ownership by way of sale, merger, consolidation, receivership, spin-off, attachment, administration and/or other forms of ownership transfer, the company, on a best effort basis, secures the conformity of the successor of all obligations stipulated in the agreement. In light of the foregoing, the Committee notes with interest the decision of the NLRC in which it found both the company and the new corporation guilty of unfair labour practice and ordered the payment of damages as well as the perpetuation within the framework of the new corporation of both the recognition of the BTCEA–FFW and the validity of the collective agreement. The Committee urges the Government to ensure that the status of the union and the collective agreement as ordered by the NLRC are valid pending any decision on appeal. The Committee requests the Government to provide a copy of the above arbitration decision of 29 February 2016 on RAB–NCR Case No. 06-07210-15, and to keep it informed of the outcome of the appeal proceedings and of any relevant developments.

The Committee’s recommendations

- 543.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee urges the Government to ensure that the status of the union and the collective agreement as ordered by the NLRC are valid pending any decision on appeal.*
 - (b) The Committee requests the Government to provide a copy of the above arbitration decision of 29 February 2016 on RAB–NCR Case No. 06-07210-15, and to keep it informed of the outcome of the appeal proceedings and of any relevant developments.*

CASE NO. 3129

DEFINITIVE REPORT

Complaint against the Government of Romania

presented by

- **the Federatia Sindicatelor Libere Independente ENERGETICA (FSLI ENERGETICA) and**
- **the Block of National Trade Unions (BNS)**

Allegations: The complainant organizations allege conclusion of an addendum (not signed by the complainant Federatia Sindicatelor Libere Independente (FSLI) ENERGETICA) to the collective agreement at the company OMV Petrom SA, which changed the definition of the term “representative union”; subsequently, discrimination of members of affiliated unions of the complainant organization FSLI ENERGETICA through exclusive provision of wage increases, financial incentives and preferential shift systems to the members of affiliated unions of the most representative trade union (‘National Union Petrom–Energie’ Federation) and discrimination of the complainant FSLI ENERGETICA through denial of access to relevant documents or of participation in various committees at the enterprise level

- 544.** The complaint is contained in communications from the Federatia Sindicatelor Libere Independente ENERGETICA (FSLI ENERGETICA) and the Block of National Trade Unions (BNS) dated 17 March 2014 and 8 January 2015.
- 545.** The Government sent its observations in communications dated 31 August 2015 and 11 July 2016.
- 546.** Romania 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

- 547.** In their communications dated 17 March 2014 and 8 January 2015, the complainants, the BNS and the FSLI ENERGETICA, allege that an addendum, concluded without the signature of FSLI ENERGETICA, to the collective agreement in force at the enterprise OMV Petrom SA (hereinafter: the enterprise or the company), changed the definition of the term “representative union” and led to subsequent discrimination of members of unions affiliated to the complainant FSLI ENERGETICA. The latter complainant indicates that on

20 May 2013, it informed the National Council for Combating Discrimination (CNCD) about the issues raised in this complaint.

- 548.** The complainants explain that, although the FSLI ENERGETICA participated in the negotiations of the addendum in line with section 135(1) of Act No. 62 of 2011 concerning social dialogue (Social Dialogue Act), it did not sign the addendum of 2 April 2013, as it considered that its paragraph 4, related to paragraph 168 of the collective agreement, was negotiated in violation of section 132 of the Social Dialogue Act, which states that collective agreements may establish rights and obligations only within the limits and conditions provided by law, and section 1 of the Social Dialogue Act, which provides that the parties cannot give other meanings to the terms and expressions set by the Act. According to the complainants, since the addendum invents terms, changes their meaning and interprets them differently than the Social Dialogue Act, it must be considered as null and void. The complainants also indicate that although they notified both the employer and the Territorial Labour Inspectorate of Bucharest about this issue, the addendum was nevertheless registered, without the signature of the complainant FSLI ENERGETICA, in the Unique Registry of Evidence. The complainants point out that the addendum specifically modifies the terms “party”, “trade union” and “representative trade union”; and that the latter term was redefined by paragraph 168 of the collective agreement as amended, as the “majority representative trade union organization within the unit”, which is understood to be the representative federation at the sectoral level, or, as the case may be, the representative trade union at the unit level, which brings together – directly or through affiliated trade unions – more than half of the total number of the employees in the unit. The complainants state that this definition contains elements contrary to the Social Dialogue Act, was invented by the employer and was built chaotically through a combination of several definitions. The complainants denounce that, under the addendum, a representative federation at the sectoral level which indirectly, through its affiliated unions, brings together more than half of the employees of the company, is considered representative at the enterprise level.
- 549.** The complainants further indicate that, as a result of the addendum, paragraph 168 of the collective agreement violates the following fundamental principles of labour law: (i) the principle of non-discrimination because, contrary to section 5(2) of Act No. 53/2003 concerning the Labour Code (Labour Code), the 2,400 employees represented by the complainant FSLI ENERGETICA would be discriminated against for not being members of the “majority representative trade union organization with the unit”; (ii) the principle of protection of employees because, contrary to section 6(2) of the Labour Code, employees currently participating in negotiations who are represented by the complainant FSLI ENERGETICA in accordance with section 135(1) of the Social Dialogue Act, would be removed from the negotiations by the “majority representative trade union organization within the company”, which would negotiate alone with the administration on the basis of section 134 of the Social Dialogue Act, which would be illegal; and (iii) the principle of freedom of association because, contrary to section 7 of the Labour Code, the addendum constitutes an illegal attempt to attract employees in the “majority representative trade union organization within the company” as well as an indirect manoeuvre to disband the unions affiliated to the complainant. Furthermore, the complainant contends that the ‘National Union Petrom–Energie’ Federation (SNPE) was fraudulently transformed from a sector-level representative federation into a trade union representative at the company level, even if this representative union does not exist legally at the level of the enterprise, and that, through this artificial construction, the employer attempts to abusively remove all trade unions affiliated to the complainant FSLI ENERGETICA, which negotiate in accordance with section 135(1)(a) of the Social Dialogue Act, and to restrict their activities.
- 550.** The complainants also assert that, based on an abusive interpretation of paragraph 168 of the collective agreement, as amended, the employer applies a differential treatment to the union members who are not part of the “majority representative trade union organization within

the unit” resulting in discrimination through exclusive provision of wage increases, financial incentives and preferential shift systems to members of affiliated unions of the SNPE, as well as discrimination of the members of the affiliates of the complainant FSLI ENERGETICA through the denial of access to information or documents relating to wages or vacancies or of participation in various committees at the enterprise level. The complainants argue that this ongoing policy of discrimination especially concerns the Free Independent Union Petrom Suplac–Marghita (SLI Petrom Suplac–Marghita), the Free Independent Union Petrosind Craiova (SLI Petrosind Craiova), Sindicatul Petrolistilor Dragasani and the Petrom Gaesti. In particular, the complainants allege that:

- in the Asset 1 Crisana Banat, where the trade union SLI Petrom Suplac–Marghita is active, the employer exclusively informs about and provides wage increases to members of affiliated unions of the SNPE, thus violating section 93 of the collective agreement and discriminating between members of two unions performing the same work;
- when the leader of SLI Petrom Suplac–Marghita requested information concerning the wages of employees of the company, the employer denied access to such information on the basis of confidentiality, contrary to paragraphs 91(3)–(4) and 149 of the collective labour agreement, section 163(2) of the Labour Code, as well as section 5(1)(b) of Act No. 467/2006 establishing a general framework for employees’ consultation, whereas such data was made available to a union affiliated to the SNPE, thus creating discrimination between this union and the complainant FSLI ENERGETICA;
- on the occasion of the October 2013 salary in Asset 1 Crisana Banat, an exceptional incentive of 500 Romanian lei (RON) per employee was granted to all members of the Suplac sector who are members of the “majority representative trade union organization within the unit”, while 45 staff members of the North Zone, members of SLI Petrom Suplac–Marghita, affiliated to the complainant FSLI ENERGETICA, did not receive the incentive, such discrimination being repeated every year as part of the employer’s strategy to destabilize member unions of the complainant;
- the employer also favours members of the “majority representative trade union organization within the unit” through preferential shift systems with all the benefits and rights for shift work, including more convenient working hours and free Saturdays and Sundays of the month in question, while employees who are members of affiliates of the complainant FSLI ENERGETICA have a normal shift programme;
- although the complainant FSLI ENERGETICA had requested to have representatives in the committees that interpret and implement provisions of the collective labour agreement, this request was not approved and, since the introduction of paragraph 4 of the addendum, the management only discusses with the “majority representative trade union organization within the unit”, that is the SNPE; and
- the employer only informs the unions within the “majority representative trade union organization within the company” about vacancies, contest dates and interview dates, thus disabling the unions affiliated to the complainant FSLI ENERGETICA, although representative through the complainant, to appoint representatives in the competition commissions or interviews, in breach of paragraph 12(2) of the collective agreement.

B. The Government's reply

- 551.** In a communication dated 31 August 2015, the Government states, first and foremost, that the nature of the allegations goes beyond the competences exercised by the public administration.
- 552.** The Government indicates that the allegations of the complainant organizations refer to presumed violations of trade union rights, including the right to collective bargaining in relation to the conclusion and registration of the Additional Act No. 05/02.04.2013 to the collective labour agreement at the enterprise and in relation to the provisions of the clauses negotiated collectively in 2013 pursuant to Act No. 62 of 2011 concerning social dialogue (Social Dialogue Act), in the presence of the complainant FSLI ENERGETICA.
- 553.** In this regard, the Government underlines that, in accordance with the law, any interference by public authorities, in any form or manner, in the process of negotiation, conclusion, execution, modification and termination of collective labour contracts, is prohibited (section 131(2) of the Social Dialogue Act). The challenges to the legality of negotiated clauses, and the execution, modification or termination of the collective labour agreement are resolved by the competent courts at the request of the parties (section 142 read in conjunction with section 152 of the Social Dialogue Act).
- 554.** The Government refers to the information submitted by the Territorial Labour Inspectorate of Bucharest as the body that has registered the collective labour agreement and its additional acts at the abovementioned enterprise by virtue of section 145 of the Social Dialogue Act.

Legislative overview

- 555.** The Government provides an overview of the relevant legal provisions. In accordance with Articles 1 and 2 of Convention No. 98, sections 2(1) and 7 of the Social Dialogue Act provide that trade unions are independent in relation to public authorities, employers' organizations and political parties; and any interference by public authorities, employers and their organizations, which could limit or prevent the exercise of trade union rights is prohibited. Under section 3(3), no one can be forced to be or not to be a member of a union, and to withdraw or not to withdraw from a trade union. Protective measures in the exercise of trade union rights are provided for in sections 9 and 10 of the Social Dialogue Act, corroborated with the protection of trade union activities guaranteed by section 38 of the Labour Code, which stipulates that employees cannot waive their rights recognized by law.
- 556.** Under sections 1(b)(iii) and (u) of the Social Dialogue Act, the right to collective bargaining is guaranteed to all trade union organizations in conformity with the provisions of Convention No. 98, and may be exercised by virtue of sections 127 and the following (based on representativeness) or by virtue of section 153 (based on mutual recognition). Collective bargaining (based on representativeness) with a view to concluding at enterprise-level collective labour agreements or additional acts with the force of law applicable to the private sector, is being undertaken according to sections 127–132.
- 557.** The Government stresses that, during the collective bargaining process (based on representativeness), the Social Dialogue Act does not prohibit the cooperation between all enterprise unions with regard to participation in the negotiations, if they agree on the aspects related to representativeness. However, the legitimacy of the parties to the negotiation and conclusion of collective labour agreements/additional acts derives from the law (sections 134 and 135 of the Social Dialogue Act). The clauses agreed through collective bargaining constitute the law of the parties.

- 558.** By virtue of section 143 of the Social Dialogue Act, the registration of collective labour agreements and additional acts concluded at the enterprise level is undertaken, at the initiative of the parties, by the territorial labour inspectorates, pursuant to the law and within the limits of their jurisdiction. Sections 143 and 145–147 stipulate the conditions for the registration of collective labour agreements and additional acts negotiated and concluded by the parties in accordance with the legal provisions.
- 559.** Pursuant to section 142 of the Social Dialogue Act, clauses of collective labour agreements/additional acts concluded in violation of the law, are null and void. The invalidity of the clauses is pronounced by the courts, at the request of the party concerned, either by way of legal action or by way of exception. Following the finding of the nullity of certain clauses by the court, the parties may agree on a new negotiation of the said clauses. Until the renegotiation of the clauses found null and void by the court, these clauses can be replaced by provisions that are more favourable to employees, either contained in the legislation or in the collective labour agreement concluded at the higher level.
- 560.** The initiation and registration of collective labour disputes must comply with sections 160–165 of the Social Dialogue Act, and the dispute resolution by amicable mechanisms is governed by the Social Dialogue Act (compulsory conciliation, mediation and voluntary arbitration) or by the practice of the company and/or by the clauses of the applicable collective labour agreements, which may provide for independent mediation structures at enterprise level.
- 561.** Similarly, under section 152 of the Social Dialogue Act, the collective labour contract/additional act cannot be terminated unilaterally. Disputes over the execution, amendment or termination of the collective labour agreement are resolved by the competent courts.

Evaluation of the allegations against the legal provisions

- 562.** Additional Act No. 05/02/04/2013 to the collective labour agreement mentioned in the text of the complaint, was concluded following a collective bargaining process initiated by virtue of sections 127–132 of the Social Dialogue Act with the persons authorized by law (that is the employee representatives elected by the general assembly of 3 October 2012 with the participation of 69 per cent of the total number of company employees; and the SNPE which is representative at the sectoral level for the sector “energy, oil, gas and related mining activity”).
- 563.** The complainant FSLI ENERGETICA also participated in the collective bargaining process, gathering, according to the statements, 2,000 members of a total of 20,000 members of the company. The FSLI ENERGETICA was mandated by three independent unions to participate in “the negotiations initiated with respect to the collective labour agreement and to other initiatives related to the labour relationships with its union members”.
- 564.** Under the legal provisions (section 142 of the Social Dialogue Act), the interested parties were free at any moment to challenge the legality of the negotiated clauses in court, the only body empowered to declare the invalidity of negotiated clauses, or to intervene in the modification of the negotiated clauses in order to return to the initial situation. The public authorities have no right to intervene in the negotiation, conclusion or modification of collective agreements (section 131).
- 565.** Moreover, according to information from the Territorial Labour Inspectorate of Bucharest, Collective Labour Agreement No. 2458/29.05.2009 was in force at the enterprise at the time of the negotiation of the Additional Act of 2013, and the conditions to trigger and register a collective labour dispute have not been fulfilled (sections 161 and 164 of the Social Dialogue

Act). Since the authorized parties concluded the Additional Act in accordance with the legal provisions, the registration of the Additional Act was requested by virtue of section 143. The Territorial Labour Inspectorate of Bucharest registered the Additional Act to the enterprise-level Collective Labour Agreement under number 05/02.04.2013, pursuant to section 145, after verification of the fulfilment of the relevant legal requirements and within the limits of its competences. The Labour Inspectorate has powers of monitoring and enforcement of the legislation/clauses of existing contracts, but has no authority to rule on their legality or to intervene in the cancellation or modification of the clauses for the restoration of rights (section 131). From the perspective of the applicable legal standards, the judicial authority is the authority empowered to resolve disputes over rights relating to the legality, implementation or amendment of clauses of collective agreements and thus to reinstate workers in their rights.

- 566.** Lastly, the Government indicates that, in 2014, a new collective labour agreement was negotiated, concluded and registered at the company, in accordance with the provisions of the Social Dialogue Act. The collective labour agreement was concluded with the National Union Petrom, a representative union at the level of the enterprise, in accordance with ruling No. 3290/03.10.2014, and registered with the Territorial Labour Inspectorate of Bucharest under No. 161/29.04.2014.
- 567.** In its communication dated 11 July 2016, the Government forwards the information provided by the company. The enterprise indicates that the Additional Act 2013 sought to modify and complete some clauses of the collective labour agreement, which was concluded in 2009 between the company and the employees represented by the Federation of Independent Free Trade Unions Petrom (FSLI PETROM) – currently the SNPE, which was at that time representative at enterprise level according to legislation in force. The collective agreement was registered at the Directorate for Labour and Social Protection Bucharest under No. 2458/2009 with a validity period of five years from the date of registration (2009–14), and was also modified before 2013, by additional acts concluded in 2010 and 2012.
- 568.** The company adds that, on 13 May 2011, Act No. 62/2011 entered into force, which abrogated the previous regulations governing the collective agreement as well as the Additional Act 2010. According to Act No. 62/2011, at enterprise level, it is the representative trade unions who have the right to participate in negotiations and represent the interests of the employees, or, in their absence, the representatives of the employees elected according to the Labour Code, together with the representative trade union federation based on the mandate entrusted by the trade unions of the enterprise, non-representative and affiliated to that federation. As concerns the representativity of trade union organizations at the level of employer, according to section 51(1)(C) of Act No. 62/2011, an entity is representative at enterprise level if: (a) it has the status of trade union; (b) it has an organizational and patrimonial independence; and (c) the number of members of that trade union represents at least half plus one of the total number of employees. The fulfilment of these criteria is established by judicial decision. Pursuant to section 134, if there is a representative trade union at enterprise level, the negotiation is carried out with this trade union.
- 569.** According to the company, the Additional Act 2012 was concluded and signed between the enterprise and employees, represented by the representatives of the employees and SNPE, which is representative for the sector “energy, oil, gas and related mining activity”, based on civil sentence No. 1166/13.02.2012.
- 570.** The company further indicates that, on 16 October 2012, a negotiation meeting took place for a new additional act, the Additional Act 2013. At this negotiation, the employees were represented as follows: the elected representatives of the employees, as stipulated in

section 221 and following of the Labour Code, the SNPE – trade union federation representative at the level of enterprise and the FSLI ENERGETICA, also a representative trade union federation at the level of enterprise. On 1 April 2013, a record concerning the finalization of negotiation was signed, registering the achievement of a common will between the company and the employees represented by the elected representatives and the SNPE regarding the conclusion of the Additional Act to the collective agreement. FSLI ENERGETICA refused to sign because it did not agree with its content. On 2 April 2013, the Additional Act was registered by the Territorial Labour Inspectorate of Bucharest under No. 05/02.04.2013, the competent authorities recognizing its legality as stipulated in section 146(2) of Act No. 62/2011.

- 571.** The company states that one of the aspects contested by the FSLI ENERGETICA was the modification of the content of paragraph 168 of the collective agreement resulting from paragraph 4 of the Additional Act 2013. The Additional Act 2012 uses the notion “representative trade union”. In the Additional Act 2013, that notion was replaced by “representative trade union organization with majority within the enterprise”, meaning “the representative federation at the level of enterprise or, where appropriate, the representative trade union at the level of enterprise, reuniting directly or by means of affiliated trade unions, more than a half of the total number of employees within the enterprise”.
- 572.** According to the company, the FSLI ENERGETICA requested the CNCD through petition No. 3441/20.05.2013 to investigate the alleged existence of discrimination suffered by members and representatives of the member trade union organizations of the FSLI ENERGETICA, following the inclusion in the Additional Act 2013 of the notion “representative trade union organization with majority within the enterprise”. The company states that the CNCD rejected the petition by Decision No. 575/02.10.2013 (attached to the communication) on the following grounds: (i) the company summoned the FSLI ENERGETICA to participate in collective bargaining, according to legal provisions; (ii) the FSLI ENERGETICA has representatives in social dialogue bodies at local level, thus being able to carry out trade union activity in accordance with the law; and (iii) the provisions of the Additional Act 2013 introducing the notion “representative trade union organization with majority within the enterprise” are not discriminatory; only if the company had applied different ways of treatment based on criteria of appreciation without an objective motivation, and leading to a possible restriction of the trade union activity, could the enterprise have been found guilty of discrimination. The company explains that, as such facts were not identified, the CNCD established that the notion in the above text is not discriminatory.
- 573.** The company adds that, on 18 April 2013, the FSLI ENERGETICA introduced an action in the Bucharest County Court, requesting the certification of the nullity of the Additional Act 2013 concerning the provisions related to the notion “representative trade union organization with majority within the enterprise”. At the trial date on 3 July 2014, the plaintiff FSLI ENERGETICA modified the action, giving up its initial request of nullity of the text related to the notion “representative trade union organization with majority within the enterprise”, requesting in exchange a certification of the nullity of the new collective agreement concluded at enterprise level for the period 2014–15, registered by the Territorial Labour Inspectorate of Bucharest under No. 161/29.04.2014. The company underlines that the FSLI ENERGETICA did not participate in the negotiation of the new collective agreement because, pursuant to civil sentence No. 3290/10.03.2014 of the Court of Ploiesti, there existed a representative trade union at enterprise level in accordance with the law, namely the National Trade Union Petrom (SNP). By civil sentence No. 9574/16.10.2014 (attached to the communication), the Court rejected the modified action of the FSLI ENERGETICA, as formulated by a person being subpoenaed. The sentence of the court of first instance was maintained by the Court of Appeal of Bucharest by its Decision No. 1728/15.05.2015 (attached to the communication).

574. The company also reports that the trade unions affiliated to the FSLI ENERGETICA attacked the additional acts concluded prior to 2013, regarding the conventional definitions found in paragraph 168 of the 2009 collective agreement. On 22 October 2012 the Independent Free Trade Union of Oil Workers in Dragasani, a trade union affiliated to the FSLI ENERGETICA, brought proceedings in the Valcea County Court, requesting, among others, the certification of nullity of paragraph 168 of the collective agreement, concerning the notion “representative trade union organization” (a notion subsequently replaced during the negotiations of the Additional Act 2013 with “representative trade union organization with majority within the enterprise”). At the same time, it requested a certification of the nullity of all clauses related to the notion under debate. The court dismissed as unfounded the court proceedings, through civil sentence No. 1508/26.11.2013 (attached to the communication), which sentence is definitive due to the failure of the trade union to file an appeal.
575. In conclusion, the company points out that it fully respects national and European legislation, respects and motivates its employees and respects the social partners, while carrying out a well-balanced and constructive social dialogue.

C. The Committee’s conclusions

576. *The Committee notes that, in the present case, the complainant organizations allege the conclusion of an addendum (not signed by the complainant FSLI ENERGETICA) to the collective agreement in force at the company, which changed the definition of the term “representative union”; subsequently, discrimination of members of affiliated unions of the complainant organization FSLI ENERGETICA through exclusive provision of wage increases, financial incentives and preferential shift systems to the members of affiliated unions of the most representative trade union – National Union Petrom–Energie Federation (SNPE) – and discrimination of the complainant FSLI ENERGETICA through denial of access to relevant documents or of participation in various committees at the enterprise-level.*
577. *The Committee notes the complainants’ allegations that: (i) while the complainant FSLI ENERGETICA participated in the negotiations of the addendum in line with section 135(1) of the Social Dialogue Act, it did not sign the addendum of 2 April 2013, as it considered that its paragraph 4 was negotiated in violation of section 132 of the Act, which provides that collective agreements may establish rights and obligations only within the limits and conditions provided by law; (ii) although it notified both the employer and the Territorial Labour Inspectorate of Bucharest about this issue, the addendum was nevertheless registered without the signature of FSLI ENERGETICA; (iii) the addendum specifically modifies the term “representative trade union” which was redefined by paragraph 168 of the collective agreement as amended, to read the “majority representative trade union organization within the unit”, which is understood to be the representative federation at the sectoral level, or, as the case may be, the representative trade union at the unit level, which brings together – directly or through affiliated trade unions – more than half of the total number of the employees in the unit – a definition the complainant alleges to be contrary to the Social Dialogue Act; (iv) under the addendum, a representative federation at the sectoral level which indirectly, through its affiliated unions, brings together more than half of the employees of the company, is considered representative at the enterprise level; (v) the addendum constitutes an illegal attempt to attract employees in the “majority representative trade union organization within the company” through an artificial construction, and an indirect manoeuvre to disband the unions affiliated to the complainant FSLI ENERGETICA, which usually negotiated in accordance with section 135(1)(a) of the Social Dialogue Act, by restricting their activities; and (vi) based on an abusive interpretation of paragraph 168 of the collective agreement as amended, the employer applies a different treatment to the union members who are not part of the “majority representative trade union organization*

within the unit” resulting in discrimination through exclusive provision of wage increases, financial incentives and preferential shift systems to members of affiliated unions of the SNPE, as well as discrimination of the affiliates of the complainant FSLI ENERGETICA through denial of access to information or documents relating to wages or vacancies or denial of participation in various committees at the enterprise level.

- 578.** *The Committee notes that the Government indicates that: (i) the nature of the allegations goes beyond the competences exercised by the public administration, since any interference by public authorities, in any form or manner, in the process of negotiation, conclusion, execution, modification and termination of collective labour contracts, is prohibited (section 131(2) of the Social Dialogue Act); (ii) during the collective bargaining process (based on representativeness), the Social Dialogue Act does not prohibit the cooperation between all enterprise unions with regard to participation in the negotiations, if they agree on the aspects related to representativeness, but the legitimacy of the parties to the negotiation and conclusion of collective labour agreements or additional acts derives from the law (sections 134 and 135); (iii) by virtue of section 143, the registration of collective agreements and additional acts concluded at the enterprise level is undertaken, at the initiative of the parties, by the territorial labour inspectorates, pursuant to the law and within the limits of their jurisdiction; (iv) sections 143 and 145–147 stipulate the conditions for the registration of collective agreements and additional acts negotiated and concluded by the parties in accordance with the legal provisions; (v) clauses of collective agreements or additional acts concluded in violation of the law are null and void, and challenges to the legality of negotiated clauses, and the execution, modification or termination of the collective agreement are resolved by the competent courts at the request of the parties (sections 142 and 152); (vi) Additional Act No. 05/02.04.2013 to the collective labour agreement was concluded following a collective bargaining process initiated by virtue of sections 127–132 with the persons authorized by law (that is, the employee representatives elected by the general assembly of 3 October 2012 with the participation of 69 per cent of the total number of company employees; and the SNPE which is representative at the sectoral level for the sector “energy, oil, gas and related mining activity”); (vii) the complainant FSLI ENERGETICA was mandated by three independent unions to participate in “the negotiations initiated with respect to the collective labour agreement and to other initiatives related to the labour relationships with its union members” and indeed participated in the collective bargaining process, representing 2,000 members of a total of 20,000 members of the company; (viii) registration was requested by virtue of section 143, and the Territorial Labour Inspectorate of Bucharest registered the Additional Act to the enterprise-level Collective Labour Agreement under number 05/02.04.2013 pursuant to section 145, after verification of the fulfilment of the relevant legal requirements within the limits of its competences (powers of monitoring and enforcement of the legislation and clauses of existing contracts, but no authority to rule on their legality); and (ix) in accordance with the provisions of the Social Dialogue Act, in 2014, a new collective labour agreement was negotiated and concluded at the company with the National Union Petrom, a representative union at the level of the enterprise, in accordance with ruling No. 3290/10.03.2014, and was registered with the Territorial Labour Inspectorate of Bucharest under No. 161/29.04.2014.*
- 579.** *The Committee also notes the company’s indications that: (i) the 2009 collective agreement was concluded with the employees represented by the Federation of Independent Free Trade Unions Petrom (FSLI PETROM) – currently the SNPE, which was at that time representative at enterprise level according to legislation in force; (ii) the collective agreement had previously been modified by the Additional Act 2012, which was concluded to adjust to the new 2011 Social Dialogue Act and signed between the enterprise and employees, represented by the representatives of the employees and the SNPE, federation representative for the relevant sector; (iii) the negotiations for the Additional Act 2013 took place between the company and the elected representatives of the employees, the SNPE and*

the FSLI ENERGETICA – two representative trade union federations at the level of enterprise; but the FSLI ENERGETICA refused to sign because it did not agree with the newly used notion “representative trade union organization with majority within the enterprise” replacing the term “representative trade union”; (iv) on 20 May 2013, the FSLI ENERGETICA brought a petition to the National Council for Combating Discrimination (CNCD) alleging discrimination suffered by members and representatives of its affiliated unions following the inclusion of the new notion in the Additional Act 2013, and CNCD rejected the petition; (v) on 18 April 2013, FSLI ENERGETICA introduced an action in the Bucharest County Court, requesting the certification of the nullity of the Additional Act 2013 concerning the provisions related to the new notion, but at the trial date on 3 July 2014, the FSLI ENERGETICA modified the action requesting instead certification of the nullity of the newly registered collective agreement for the period 2014–15 concluded, without the participation of the FSLI ENERGETICA, between the company and the existing representative trade union at enterprise level, the National Trade Union Petrom (SNP); and the Court rejected the modified action through Decision No. 9574/16.10.2014, which was upheld by the Court of Appeal of Bucharest (Decision No. 1728/15.05.2015); and, additionally, (vi) on 22 October 2012, the Independent Free Trade Union of Oil Workers in Dragasani, affiliated to the FSLI ENERGETICA, had brought an action to the Valcea County Court, requesting the certification of nullity of the Additional Act 2012 regarding the notion “representative trade union organization”, which the court had dismissed as unfounded.

580. *Firstly, as regards the allegedly illegal and discriminatory nature of Additional Act No. 05/02.04.2013 to the collective labour agreement, the Committee observes that, as a result of its paragraph 4 substituting the term “majority representative trade union organization within the unit” for “representative trade union”, a representative federation at the sectoral level which indirectly, through its affiliated unions, brings together more than half of the employees of the company, may be considered the majority union at the enterprise level. The Committee further observes that, according to the complainants, whereas FSLI ENERGETICA was previously entitled, on an equal footing with the SNPE, to represent employees within the negotiation process of the collective agreement and in other bodies at the unit level (upon request and based on the mandate given by its affiliated enterprise unions, together with the elected worker representatives, as provided in section 135(1)(a) of the Social Dialogue Act for undertakings where there are no most representative workers’ organizations), the modification in paragraph 4 of the Additional Act, which they allege is contrary to the Social Dialogue Act, has limited the right of FSLI ENERGETICA to bargain collectively, as also illustrated by a document enclosed to the complaint informing on the outcome of negotiations between SNPE and the company. The Committee considers that, since the clauses of the modified collective agreement per se cannot be viewed as incompatible with the principles of freedom of association, it is not the Committee’s role to express a view on the conformity of collective agreement clauses with the relevant national law, since this competence lies within the remit of national jurisprudence. In this regard, with respect to the petition submitted by the FSLI ENERGETICA to the CNCD alleging that the modified term in paragraph 4 of the Additional Act 2013 amounts to discrimination, the Committee observes that the company affirmed that the participation at negotiations is done according to legal provisions by representation under the conditions of the law through trade unions, trade union federations or employees’ representatives; and that, on 2 October 2013, the CNCD dismissed the petition holding that, to the extent that the provisions of the Additional Act 2013 introducing the notion “representative trade union organization with majority within the enterprise” do not generate a differentiated treatment, they shall not be discriminatory.*

581. *Secondly, as regards the alleged subsequent discrimination in practice based on the Additional Act 2013, through denial to the FSLI ENERGETICA of access to relevant documents or of participation in various committees at the enterprise level as opposed to the*

“majority representative trade union organization within the unit”, the Committee observes that the evidence provided by the complainants is limited to letters sent to management by FSLI ENERGETICA affirming its right to take part in various enterprise-level commissions and nominating its participants. Moreover, the Committee observes that, in its decision dated 2 October 2013, the CNCD found that the company proved that the FSLI ENERGETICA was convoked and participated in negotiations according to the law and that it has representatives in the parity commissions, thus being able to carry out its trade union activities in accordance with the law. As to the right to information, the Committee notes the decision of the CNCD dated 9 March 2016, in which: (i) the CNCD observes that the respondent showed that the information requested could not be disclosed due to data protection laws and that no such requests for information had been registered from the purportedly favoured union SNPE; and (ii) the CNCD concludes that there is no evidence proving the alleged act of discrimination. The Committee further notes that the documentation provided by the complainants consists of correspondence addressed to the company, requesting information (concerning the list of employees including their function, the wages paid to its union members, the beneficiaries and criteria for the wage increases, etc.) in relation to measures taken by management so as to assess their purportedly discriminatory character. Considering that the right to information for trade unions in an enterprise should be appropriately assured to enable them to further and defend the interests of their members, the Committee invites the Government, for the sake of harmonious labour relations, to facilitate talks between the company on the one side and the complainant FSLI ENERGETICA and its affiliated organizations on the other side so as to review the various requests for information and agree on mutually satisfactory arrangements, in conformity with the data protection legislation in force, regarding the information that needs to be provided for the effective exercise of their representation activities.

- 582.** Thirdly, as regards the alleged discrimination in practice based on the Additional Act 2013 through the exclusive provision of wage increases, exceptional financial incentives and preferential shift systems to members of the “majority representative trade union organization within the unit”, the Committee observes that these allegedly discriminatory practices occurred subsequently to the CNCD’s rendering of its decision dated 2 October 2013, and were examined by the CNCD in its decision dated 9 March 2016. The Committee duly notes the erga omnes nature of the collective agreement as modified, which thus applies to all employees of the company. The Committee observes the documentation supplied by the complainants, namely: (i) correspondence addressed to management, complaining about wage increases of various amounts (100–200 Romanian lei (RON)) granted on 1 January 2014 to about 100 employees (nominal list) following secret negotiations with SNPE, leading to discrepancies between members in similar positions and with the same duties of the two unions from the Suplac zone of Asset 1 Crisana Banat; (ii) correspondence addressed to management, complaining about exceptional incentives of RON500 granted in October 2013 to the whole of the employees of the Suplac sector and 85 per cent of the employees of the Marghita zone (nominal list of employees not benefiting from the incentive); and (iii) examples of schedules of January 2014 illustrating more favourable shift systems for three SNPE members versus six FSLI ENERGETICA members. Regretting that neither the Government nor the company made any reference to these allegations, the Committee observes that the CNCD, in its decision dated 9 March 2016: (i) concerning the alleged discrimination with regard to wage increases, notes that the petitioner did not submit the announced evidence, and that the respondent claimed that the wage increases as of 1 January 2014 were granted exclusively as a result of the direct managers’ observations relating to the professional activity of the relevant employees (trade union membership not being a criterion) and that there were also members of the affiliates of the complainant organization who benefited of those wage increases; (ii) concerning the alleged discrimination with regard to exceptional financial incentives, notes that the respondent specified that such incentives were not granted according to trade union membership but rather in order to reward those employees who were engaged in the extra effort to stop the

decline of crude oil (those who have not received the incentive were employees working in gas extraction who have not made such extra effort); (iii) concerning the alleged discrimination with regard to shift systems, notes that the petitioner did not submit the announced evidence, and that the respondent specified that, as shown by the number of night hours worked by shift workers in the Suplac zone between January and May 2014, employees work a similar number of hours during the night shift, regardless of trade union membership; and (iv) concludes that there is no evidence proving the alleged acts of discrimination. The Committee also notes that, in the meantime, a new collective labour agreement between the company and the enterprise union National Union Petrom was registered on 29 April 2014, and that the complaint lodged by the FSLI ENERGETICA contesting the representativity of the latter union was dismissed. In light of the above, and in the absence of any further evidence or information provided by the complainants, although they have been requested to do so, the Committee will no longer pursue the examination of these allegations.

The Committee's recommendation

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

The Committee invites the Government to facilitate talks between the company on the one side and the complainant FSLI ENERGETICA and its affiliated organizations on the other side so as to review the various requests for information and agree on mutually satisfactory arrangements, in conformity with the data protection legislation in force, regarding the information that needs to be provided for the effective exercise of their representation activities.

CASE NO. 3175

DEFINITIVE REPORT

Complaint against the Government of Uruguay presented by

- **the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and**
- **the Independent Tobacco Workers' Union (SAT)**

Allegations: The complainants allege that the Government interfered with the exercise of the right to bargain collectively by ordering the absorption into the National Integrated Health System (SNIS) of tobacco workers who were covered by a collective agreement that provided for better health benefits

584. The complaint is contained in a communication dated 23 November 2015 from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Independent Tobacco Workers' Union (SAT). The SAT sent additional information in communications dated 14 January, 4 February and 4 May 2016.

585. The Government sent its observations in a communication dated 26 July 2016.
586. Uruguay 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), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

587. In a communication dated 23 November 2015, the complainants allege that the absorption into the National Integrated Health System (SNIS) of tobacco workers who were covered by a special health insurance scheme under a collective agreement constitutes interference with the exercise of the right to bargain collectively and a violation of Convention No. 98. Specifically, they state that: (i) since 1961, the SAT has had a health insurance scheme pursuant to a collective agreement; (ii) not only does this scheme meet the legal requirements for health benefits, but many of its benefits are better than those required by law since the numerous medical services offered to tobacco workers are totally free of charge; (iii) through Act No. 18211 of 5 December 2007, the Uruguayan Government established the SNIS, mandated the absorption into this system of conventional emergency and insurance schemes and empowered the executive branch to accord the same treatment to workers covered by schemes established through collective agreements; (iv) in a decree of 8 January 2008, the executive branch ordered the absorption into the SNIS of workers covered by the collective agreement that had established the health service for tobacco workers; (v) by Decree No. 421/010 of 30 December 2010, the executive branch postponed this absorption until 1 January 2016; (vi) Act No. 18211 does not require the absorption of tobacco workers into the SNIS; section 69 thereof merely empowers the executive branch to undertake such absorption where expedient; (vii) the continued existence of private health-care entities that are not absorbed into the SNIS is not incompatible with the aforementioned Act's goal of universal coverage, nor does it hinder the functioning of the integration scheme implemented pursuant to it; and (viii) the argument that it is expedient to absorb tobacco workers into the SNIS is invalid since the costs of their specific health-care system are fully covered by contributions from the industry's employers.
588. In communications dated 14 January, 4 February and 4 May 2016, the SAT, relying on the legal opinion of a noted Uruguayan professor of labour and social security law, maintains that: (i) the tobacco workers' conventional health-care system is egalitarian for all workers in the industry, whether in service or retired; (ii) conventional health benefits have an obvious advantage in terms of tobacco workers' conditions of employment and wages because they entitle the workers to excellent health benefits at no cost; (iii) by contrast, the SNIS requires workers to pay contributions and offers a lower standard of medical care; (iv) Decree No. 421/010 of 30 December 2010, which postponed the tobacco workers' absorption into the SNIS until 1 January 2016, recognizes that health benefits established in a collective agreement are a form of wage; (v) absorption into the SNIS would therefore be seriously detrimental to tobacco workers in two ways: their health benefits would be of lower quality and their wages would be reduced in so far as they would have to cover a portion of their medical expenses; (vi) attempted tacit abolition of a more beneficial scheme resulting from collective bargaining constitutes an act of state interference since intervention by the legislative or administrative authorities that results in repeal or modification of the provisions of freely agreed collective agreements is contrary to the principle of voluntary collective bargaining; (vii) the law may not modify more advantageous working conditions *in peius* and respect for the favourability principle which is inherent in labour law, implies that this collective agreement takes precedence over health legislation; and (viii) an order from the executive branch that repeals a collective agreement has an impact on both the

workers' and the employers' organizations which, through that agreement, established sound labour relations in a climate of social dialogue.

589. In its communication of 4 February 2016, the SAT provides an additional document dated 29 January 2016, signed by the SAT and the Association of Tobacco and Cigarette Manufacturers and Importers (AFITyC), in which the parties: (i) recall that their collective agreement provides that workers shall receive free, comprehensive health benefits as part of their wages with the costs covered by the enterprises; (ii) reiterate their desire not to modify the provisions of the collective agreement and to cooperate actively in combating any attempt to violate it; and (iii) request the Ministry of Health to keep the current scheme in force.

B. The Government's reply

590. In a communication dated 26 July 2016, the Government denies that the absorption of tobacco workers into the SNIS constitutes interference with their exercise of freedom of association or their right to bargain collectively. It maintains that: (i) the protection of freedom of association has been one of the key elements of the Uruguayan Government's labour policy over the past ten years; (ii) the right to social security is a fundamental human right that is enshrined in the principal international human rights instruments; (iii) since 2005, Uruguay has made significant progress in expanding social security coverage, increasing equity in financing and improving the quality of health benefits; (iv) these efforts have focused on the establishment of the SNIS, which ensures equitable, universal health coverage; (v) the SNIS is financed through a single public fund to which the State, public and private enterprises and all households that receive benefits under the system are required to contribute; (vi) Act No. 18131 of 18 May 2007 established the National Health Fund (FONASA) and began the gradual inclusion of various groups into the SNIS; (vii) Act No. 18211 of 5 December 2007 established the guiding principles of the SNIS, which include universal coverage, solidarity in public financing, effectiveness and efficiency in economic and social terms and sustainability in the allocation of resources to comprehensive health care; and (viii) section 61 of the Act provides that the State, non-state public entities and private enterprises shall contribute 5 per cent of the total wages that they pay their workers to FONASA.

591. The Government adds that, as part of the process of achieving universal health coverage through the SNIS, the aforementioned Act No. 18211 calls for the absorption into that system of workers currently covered by various conventional emergency and insurance schemes and that this was in fact done on 1 July 2011. Furthermore, section 69 of the Act empowers the executive branch to accord similar treatment to workers with insurance schemes agreed with private-sector employers through collective agreements or similar instruments. Pursuant to that provision, the executive branch has gradually absorbed into the SNIS various groups in situations analogous to that of the tobacco workers, including, as from 1 January 2009, members of the Retirement and Pension Fund for Members of the Professions and, as from 1 January 2010, members of the Bank Workers' Retirement and Pension Fund, who had previously had health insurance pursuant to collective agreements. Thus, the tobacco workers were among the last groups to be absorbed into the system.

592. The Government also states that: (i) far from constituting an act of interference with freedom of association and collective bargaining, the absorption of tobacco workers is the outcome of one of the most important public policies of the past decade – the consolidation of a universal health-care system financed through contributions from all of the country's enterprises and workers – and is thus fully consistent with the Medical Care and Sickness Benefits Convention, 1969 (No. 130), which Uruguay ratified in 1973; (ii) the purpose of centralizing all affiliates under the SNIS is to eliminate the extreme fragmentation of Uruguay's health-care system, within which the social sectors with the greatest potential for

organization and the highest wages had established their own subsystems; (iii) in order for the SNIS to be economically and financially sustainable, it is essential for it to be financed by society as a whole in a manner proportionate to enterprises' and citizens' capacity to contribute; and (iv) it is therefore inconceivable that a large industry such as tobacco, in which wages are significantly higher than the national average, should not be absorbed into a national health-care system in order both to share in the benefits of its consolidation and to make an equitable contribution to its financing.

- 593.** Lastly, the Government states that if the tobacco workers consider that absorption into the SNIS entails a reduction in their current benefits, there is nothing to prevent them from agreeing with their employer, through collective bargaining, to keep their additional benefits and that through such bargaining they can have the same benefits as before, but on the basis of the SNIS.

C. The Committee's conclusions

- 594.** *The Committee notes that this case concerns allegations of government interference with the exercise of the right to bargain collectively by the SAT, which comprises tobacco workers who had their own health insurance scheme, established through a collective agreement, and have been absorbed into the SNIS by decree.*

- 595.** *The Committee takes note of the complainants' specific allegations that: (i) on 30 April 2016, on the basis of Act No. 18211 (2007), the executive branch absorbed the tobacco industry's workers into the SNIS; (ii) this absorption repealed the conventional health insurance scheme that those workers had had since 1961; (iii) the tobacco industry's collective agreement (which was revised in 2005 and has been tacitly extended since then) provides for better health insurance and benefits than the legal scheme since, in particular, it has offered free, high-quality comprehensive health coverage to tobacco workers, both in service and retired; (iv) the absorption of tobacco workers into the SNIS violates the independence of the parties to collective bargaining in the industry and those workers have expressly requested the Government to keep their conventional health insurance scheme in force; (v) the aforementioned absorption is also contrary to the favourability principle in so far as it gives precedence to health-care legislation that is less beneficial than that provided under the collective agreement and entails a significant reduction in tobacco workers' wages; and (vi) absorption into the SNIS is not an automatic and mandatory consequence of Act No. 18211 (2007), which established the SNIS, since section 69 of the Act merely empowers the Government to absorb groups that are covered under a special conventional health insurance scheme.*

- 596.** *The Committee also notes that, according to the Government: (i) since 2007, the SNIS has been the primary tool for achieving universal health coverage in Uruguay with a view to full implementation of ILO Convention No. 130. This will require eliminating the fragmentation of the country's health-care system and ensuring that all of its workers and employers, including in industries with wages higher than the national average, contribute to the SNIS; (ii) it is therefore inconceivable that a large industry such as tobacco, in which wages are significantly higher than the national average, should not be absorbed into a national health-care system; (iii) tobacco workers were one of the last groups to be absorbed as part of the unification of the national health system in question, after other groups that had also had a conventional health-care system in the past; and (iv) the absorption of tobacco workers into the SNIS does not prevent the industry's workers and employers from agreeing, through a collective agreement, to keep health benefits over and above those required by law; thus, their absorption fully respects the right to bargain collectively.*

- 597.** *The Committee observes from the documents provided by both the complainants and the Government that the tobacco workers were absorbed into the SNIS through the following steps: (i) in 2007, the SNIS was established through Act No. 18211; (ii) in 2008, an initial decree ordered that the tobacco workers be absorbed into the system; (iii) a second decree, dated 30 December 2010, postponed the aforementioned absorption until 31 December 2015; (iv) Decree No. 109-016 postponed this absorption for a second and final time until 30 April 2016 so that the workers “can conclude the ongoing bargaining with the employers in order to reach agreement regarding the coverage of health-care costs for their group”; and (v) the absorption became effective on 30 April 2016.*
- 598.** *The Committee also observes that: (i) the tobacco industry’s collective agreement, which was signed in 1961, was revised in 1986 and again in 2005, when it was extended by decree; (ii) the agreement itself states that it shall remain in force for one year and shall be renewed automatically for one-year periods unless it is terminated by one of the parties; (iii) in 2014, the signatories to the collective agreement confirmed that the conventional health insurance scheme established therein remained in force and on 29 January 2016, they jointly requested the executive branch not to absorb the tobacco workers into the SNIS and to keep their conventional health insurance scheme in force; and (iv) furthermore, the SAT has appealed the absorption order before the administrative court and the court’s decision is pending.*
- 599.** *In light of the foregoing, the Committee observes that the tobacco workers’ absorption by decree into the SNIS as part of a policy leading to a universal, unified Uruguayan health system terminates the specific conventional health insurance scheme that has covered the tobacco workers since 1961. The Committee understands from the Government’s observations and the various documents appended to the complaint that the financial contribution to the financing of the national health-care system made by the industry’s employers and workers is an important element of this absorption. On this point, the Committee would like to recall firstly that it is not within the mandate of the Committee to examine the opportunity of the establishment of a universal health insurance scheme that includes all of the country’s workers, including those groups previously covered by a special conventional scheme. It falls however within the mandate of the Committee to ensure that such a scheme is implemented in a manner consistent with the principles of freedom of association and collective bargaining, as it has had occasion to do in cases involving the establishment of a universal old-age pension scheme [see 349th Report, Case No. 2434, para. 661].*
- 600.** *In that regard, while noting that the tobacco workers’ absorption into the SNIS resulted in the elimination of their special conventional health insurance scheme, thus modifying the content of their collective agreement (which, unless new conventional provisions on health care are adopted, would entail a reduction in benefits that constitute wages for these workers), the Committee observes that Uruguayan law allows employers’ and workers’ organizations to agree, through a collective agreement, on health benefits over and above those required by law. The Committee therefore points out that the establishment of the SNIS does not exclude health insurance from the scope of collective bargaining and that the tobacco workers’ absorption into the SNIS does not result in the automatic elimination of conventional health-care benefits in this industry. The Committee also observes that the tobacco workers’ actual absorption into the SNIS was postponed on two occasions through the adoption of special decrees, as a result of which it occurred eight years after the adoption of the initial decree ordering the change in the insurance scheme, so that the signatories to the tobacco industry’s collective agreement, which remains in force for one-year periods and is renewed automatically, could adapt the health-related provisions of and benefits under their collective agreement to the new legislative and institutional framework through negotiation. Under these circumstances, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

601. *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. 2254

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by

- **the International Organisation of Employers (IOE) and**
- **the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS)**

Allegations: Marginalization of employers' associations and their exclusion from decision-making, thereby precluding social dialogue, tripartism and consultation in general (particularly in respect of highly important legislation directly affecting employers) and failing to comply with recommendations of the Committee on Freedom of Association; acts of violence, discrimination and intimidation against employers' leaders and their organizations; detention of leaders; legislation that conflicts with civil liberties and with the rights of employers' organizations and their members; a violent assault on FEDECAMARAS headquarters, resulting in damage to property and threats against employers; and a bomb attack on FEDECAMARAS headquarters

602. The Committee last examined this case at its May–June 2016 session, when it submitted an interim report to the Governing Body [see 378th Report, approved by the Governing Body at its 327th Session (June 2016), paras 821–854].

603. The International Organisation of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) provided additional information in joint communications dated 8 July 2016 and 8 May 2017.

604. The Government sent additional observations in communications dated 2 September 2016 and 23 May 2017.

605. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

606. When it last examined the case at its May–June 2016 session, the Committee made the following recommendations on the matters still pending [see 378th Report, para. 854]:

- (a) While once again expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of conducting economic warfare, the occupation and looting of shops and the seizure of FEDECAMARAS headquarters, the Committee draws the Government's attention to the urgency of taking strong measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela. The Committee strongly urges the Government to take all necessary measures to ensure that FEDECAMARAS is able to exercise its rights as an employers' organization in a climate that is free from violence, pressure or threats of any kind against its leaders and members and to promote, together with that organization, social dialogue based on respect.
- (b) As regards the abduction and mistreatment in 2010 of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds), while noting the sentencing of one of the accused to 14 years and eight months' imprisonment, the Committee requests the Government to send a copy of the ruling issued and to continue providing additional information concerning any penalties imposed on the perpetrators of these crimes, and concerning any compensation to FEDECAMARAS and to the leaders concerned for damage caused by those illegal acts. Furthermore, the Committee reiterates its request to the Government to send its observations concerning the points raised by FEDECAMARAS with regard to the bomb attack on its headquarters on 26 February 2008.
- (c) As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee insists that those current or former leaders of FEDECAMARAS be compensated in a just manner. At the same time, the Committee refers to the decision of the Governing Body in March 2014, in which it "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners", which in turn refers to "the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises and other related problems arising or that may arise in the future". The Committee regrets that the Government stated in previous communications that establishing a dialogue round table on questions of recovery of estates and holding consultations on legislation are not viable and that, in its latest communication, it merely indicates that it proceeded in compliance with the law. The Committee firmly urges the Government to implement this request along the lines described in the conclusions and to report thereon. Lastly, like the high-level tripartite mission, the Committee emphasizes "the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property".
- (d) As regards the structured bodies for bipartite and tripartite social dialogue which need to be established in the country, and the plan of action in consultation with the social partners, involving the establishment of stages and specific time frames for its implementation with the technical assistance of the ILO, as recommended by the Governing Body, the Committee regrets the lack of information and further progress in this regard. The Committee recalls that the conclusions of the mission also refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee urges the Government to immediately adopt tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission. Observing that the Government has not yet provided the requested plan of action,

the Committee urges the Government to implement fully without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon. The Committee urges the Government to promote social dialogue and initiatives taken in this area, such as the meetings held between the authorities and FEDECAMARAS in February and October 2015, and to implement tripartite consultations immediately.

- (e) The Committee, in line with the conclusions of the high-level tripartite mission, urges the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee requests the Government to inform it of any measures taken in this regard. The Committee regrets that the Government has not appointed a representative of FEDECAMARAS to the Higher Labour Council or the social dialogue body fulfilling its functions, and urges the Government to do so as soon as possible.
- (f) The Committee, having noted the Government's observations concerning the allegations of detention and trial of employers and leaders in various sectors, regrets that once again a full answer has not been provided in relation to the individuals who are the subject of investigation procedures. As regards the cases of Corporación Cárnica and the "Día a Día Practimercados" chain, the Committee urges the Government to indicate the specific allegations against the people under investigation or trial by the judicial authorities, and not merely give an indication of general criminal offences, and to provide information on the progress of the respective judicial proceedings and their compliance with precautionary or detention measures. The Committee again requests the authorities to consider lifting any preventive detention measures imposed on employers' and business leaders pending trial. As regards the allegation of the detention of the managers of the FARMATODO pharmacy chain, the Committee requests the Government to confirm whether the charges against these individuals have been dropped or, if not, to indicate the specific allegations against them and to provide information on the progress of the respective judicial proceedings; and, in view of the complainants' allegation that four of the owners and managers of this pharmacy chain had been arrested, the Committee urges the Government to indicate whether any other individuals are currently under arrest or trial, and it invites the complainant organizations to provide the Government and the Committee with any detailed information that they may have on this matter.
- (g) As regards the allegations of the detention of the president of [the National Commerce and Services Council (CONSECOMERCIO)], Mr Eduardo Garmendia, the president of [the National Association of Supermarkets and Self-Service Stores (ANSA)], Mr Luis Rodríguez, and the president of the Venezuelan Association of Clinics and Hospitals, Mr Rosales Briceño, and allegations of shadowing and harassment of the president of FEDECAMARAS, Mr Jorge Roig, given the divergences between the allegations and the Government's reply, the Committee invites the complainants to provide the Government and the Committee with additional information, including any evidence they may have, and it urges the Government, on the basis of such information, to carry out any relevant additional investigations and to keep the Committee informed on this matter.
- (h) As regards the adoption by the President of the Republic, in November 2014, of 50 decree-laws on important economic and production-related issues without consulting FEDECAMARAS, the Committee regrets that the Government has not made any observation concerning their impact on social dialogue and, deeply deploring the persistence of this situation, it firmly expects that full consultations will be held in the future with the most representative organizations of workers and employers, including FEDECAMARAS, on draft legislation covering labour or social matters that affect their interests and those of their members.
- (i) The Committee expresses its deep concern at the lack of information and progress on the above issues and urges the Government to take all the requested measures without delay.
- (j) The Committee notes with great concern the new allegations of the IOE and FEDECAMARAS dated 20 May 2016, in which it is alleged: (i) the enactment in December 2015, without consultation with the social partners, of 29 national laws, including the law on job security; (ii) semblance of dialogue through communications to FEDECAMARAS by the Government, when it has already announced or adopted the measures concerned; (iii) the unilateral promulgation without prior consultation of the Decree of the President of the Republic declaring a state of emergency for economic

hardship; (iv) new acts of intimidation against FEDECAMARAS; (v) approval without consultation of a new increase in the minimum wage and the value of the socialist Cestaticket in February 2016; and (vi) failure by the Government to implement the road map presented to the Governing Body of the ILO in March 2016. The Committee requests the Government to send its observations on these allegations without delay so that the Committee can examine all the relevant elements.

- (k) The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

B. The complainants' new allegations

607. In its communication of 8 July 2016, the IOE and FEDECAMARAS report new events that constitute repeated and aggravated violation of the principles of freedom of association and proof of the Government's unwillingness to resume social dialogue.

608. First, the complainants report that the Government has failed to honour its undertaking to establish dialogue round tables. They recall that during the March 2016 session of the Governing Body, the Government presented a proposed action plan that provided for the establishment of a round table for dialogue between representatives of the Government and of FEDECAMARAS and included a schedule of fortnightly meetings. FEDECAMARAS stated that the first meeting could not be held on the proposed date of 5 April 2016 because it had previously scheduled a national council meeting for that date. However, although FEDECAMARAS contacted the People's Ministry for the Social Process of Labour on several occasions in an effort to reschedule the first meeting, as at the date of the communication it had received no invitation. On 22 April 2016, FEDECAMARAS sent the Ministry a letter in which it mentioned the failure to implement the action plan proposed by the Government. On 10 May 2016, FEDECAMARAS informed the Government that it was concerned at the Government's continuing and persistent violations of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) through further acts of intimidation, approval of the minimum wage without consultation and failure to honour commitments to the Governing Body. In this second communication, FEDECAMARAS once again called for sincere, ongoing and effective dialogue in order to find tangible solutions to the crisis faced by the country. It received no reply to this message; moreover, in public speeches broadcast on the state channel on 30 April and 3 May 2016, the President of the Republic declared that he was not prepared to engage in any dialogue with FEDECAMARAS.

609. Second, the complainants report further acts of intimidation directed against FEDECAMARAS, in particular: (a) intimidating accusations made during the aforementioned public speeches made by the President of the Republic, in which the current and former Chairpersons of FEDECAMARAS were depicted as enemies of the workers and curtailers of labour rights; (b) use of the state television channel to call on the public to mobilize against FEDECAMARAS (a programme entitled "Zurda Konducta", broadcast on 25 April 2016); (c) a press release issued by the President of the Republic on 17 May 2016, attacking FEDECAMARAS and stating that FEDECAMARAS and its affiliate, the National Commerce and Services Council (CONSECOMERCIO), were the only unions that were not members of the National Council on the Productive Economy (although it was the President himself who had selected and sworn in the members of that Council and had not invited FEDECAMARAS or its affiliates); and (d) a statement made by a deputy – who is also the Deputy Chairperson of the ruling party – in his programme on the state television channel, claiming that the entrepreneurs who had signed the request for a recall referendum would be ineligible for government contracts and for loans from the state-owned bank.

- 610.** Third, the complainants report that on 13 May 2016 (three days after the expiration of the most recent economic emergency decree), the Government once again decreed a state of economic emergency through Decree No. 62227, which suspends the constitutional guarantees on economic matters in language that repeats intimidating and groundless claims of a hostile, destabilizing attitude on the part of some private sectors of the economy, an attack on the Government and efforts to hinder access to essential public goods and services by the country's economic agents at the instigation of foreign interests. The Decree also gives the Government sweeping powers, imposes additional repressive measures on employers and authorizes using the armed forces and other organizations to ensure the distribution and sale of food and other essential items, taking steps to ensure that the private sector provides support to the public sector and placing restrictions on commercial and financial operations and transactions. These intimidating and repressive measures, together with the media campaigns waged against FEDECAMARAS and its members by the Government and its agencies, are seriously undermining freedom of association.
- 611.** In their communication of 8 May 2017, the IOE and FEDECAMARAS allege: (i) authorities and spokespersons for or linked to the Government have continued to attack FEDECAMARAS, its leaders and the business sector; intimidating accusations and threats have been made through the media by, among others, the Deputy Chairperson of the government party and the President of the Republic himself; government authorities have attacked and detained leaders, employees and shareholders, accusing them of corruption or economic destabilization and subjecting them to public ridicule without guaranteeing due process or their right of defence; (ii) there is no genuine dialogue: the complainants reiterate that the dialogue which the Government had announced to the Governing Body of the ILO has not taken place and emphasize that FEDECAMARAS has been excluded through new government measures that have an impact on business performance and undermine freedom of association (such as the approval, without consultation, of the purchase from farmers of 50 per cent of agro-industrial production for use by local supply and production committees and the creation of workers' production boards as one of several government strategies for using the country's labour movement in support of the Government and against employers); (iii) another economic emergency decree was promulgated on 13 September 2016 (and, once again, its wording is part of the campaign to stigmatize the business sector) and increases in the minimum wage and the *cestaticket* (food voucher) were approved without consultation in January and April 2017 and February 2017, respectively; (iv) notwithstanding the fact that written communications were exchanged and meetings held between FEDECAMARAS and the People's Ministry for the Social Process of Labour (specifically, on 11 and 31 January and 27 April 2017), these meetings, which were held in a climate of institutional respect, were purely formal in nature, did not take place within structured dialogue mechanisms or in a climate of sufficient trust between the parties to support the realization of effective dialogue and were carried out simultaneously with the aforementioned intimidating attacks; and (v) while it is possible that one of its chambers of commerce or employers might participate in a meeting on a one-time basis, FEDECAMARAS as an institution is still not a member of the National Council on the Productive Economy.

C. The Government's reply

- 612.** In its communication of 2 September 2016, the Government sent its observations concerning the aforementioned recommendations of the Committee.
- 613.** Concerning recommendation (a), the Government once again denies having attacked, harassed or persecuted FEDECAMARAS, its affiliates or its leaders and emphasizes that no FEDECAMARAS members have been detained or prosecuted. On the contrary, the Government indicates that it has implemented policies designed to foster private enterprises by increasing their productivity. The Government maintains that through actions wholly unrelated to employer representation, FEDECAMARAS functions as a political organization

in opposition to the Government and the President of the Republic (as seen from its Chairperson's recent support for the recall referendum; its involvement in the 2002 coup d'état, when its Chairperson proclaimed himself President of the Bolivarian Republic of Venezuela; and other attacks on and attempts to destabilize the Government). The Government states that the country is experiencing a complex economic situation owing to the decline in oil prices and the destabilization efforts of economic groups and that this has led to a flurry of statements and demonstrations by both government and private enterprise representatives which demonstrate that there is complete freedom of expression in the country and that institutions are in place to hear the complaints of people who feel that they have been affected, insulted or slandered. The Government considers that freedom of association and expression are freely exercised in the country and that there has been no violation of Convention No. 87. It therefore calls on the Committee to cease to examine irrelevant issues and not to allow itself to be co-opted by individual political interests in a campaign against the Bolivarian Republic of Venezuela.

- 614.** Concerning recommendation (b), the Government reiterates that the trial of Mr Antonio José Silvia Moyega was concluded on 18 September 2015 and that he was sentenced to 14 years and eight months' imprisonment for his attacks on Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz and is currently in prison. The Government adds that this was shown to have been a chance act perpetrated by a criminal gang and that the victims were not targeted because they were business leaders and FEDECAMARAS members. The Government adds that it has requested the Public Prosecutor's Office to provide a copy of the judgment, which, once received, will be forwarded to the Committee. It further states that it has already provided its observations concerning the attacks on FEDECAMARAS headquarters in 2008, stating that the perpetrator has died and that the Public Prosecutor's Office has reported that for this reason, it has closed the case. The Government reiterates its request that the Committee not pursue its examination of these allegations and considers that it has already provided sufficient information concerning them.
- 615.** Concerning recommendation (c), the Government maintains that there has been no violation of property rights or discrimination in implementing the land recovery legislation and that these issues lie outside the Committee's mandate. The Government reiterates that in recent years, under the farmland recovery policy, there have been many recoveries of illegally occupied idle land to which the occupants were unable to show title and emphasizes that very few of the recoveries could have affected FEDECAMARAS leaders (the reported cases account for 0.74 per cent of the lands recovered). The Government considers that this proves that there has been no retaliation against any entrepreneur or member of FEDECAMARAS, but rather implementation of its policy for elimination of the landed estate (*latifundia*) system as a whole for the benefit of workers in line with the Tenants and Share-croppers Recommendation, 1968 (No. 132) and the Rural Workers' Organisations Recommendation, 1975 (No. 149)). It also emphasizes that the recoveries have been carried out with full respect for rights and guarantees and that where the people who occupied the recovered land can show that they have made improvements to it, they are compensated accordingly. As regards Mr Eduardo Gómez Sígala, Mr Rafael Marcial Garmendia and Mr Manuel Cipriano Heredia, the Government reiterates that there was no expropriation; the lands were recovered because they were idle and the occupants were unable to show title to them, and the law and due process were followed (in the case of Mr Garmendia, only a portion of the land that he occupied was recovered because he was able to show title to another portion, which is still in his possession). As regards the cases of Mr Egildo Luján and Mr Vicente Brito, the Government reiterates that according to the National Land Institute, its archives contain no information on any possible recoveries or expropriations under their names.

616. Concerning recommendation (d), as previously the Government states that there is broad, inclusive social dialogue in the country and emphasizes that FEDECAMARAS, its leaders and its affiliates have met with various government authorities on countless occasions. The Government maintains that while some organizations have used non-attendance at consultations and round tables as a political strategy, this has not prevented hundreds of their affiliate employers' organizations from participating. The Government recalls the 2014 establishment of the Economic Conference for Peace, in which all of the economic and social sectors were invited to take part and at which 14 different working groups comprising representatives of the Government, workers and employers from all parts of the country were set up with the aim of boosting the national economy; the establishment, in 2015, of the Presidential Commission on Economic Affairs (as one of the outcomes of the economic working groups) in order to boost the export of non-traditional products; and the holding of other enterprise meetings such as the International Chocolate Fair (October 2015) and the Sustainable Venezuela World Expo (September 2015). The Government also draws attention to the establishment of the National Council on the Productive Economy, which comprises representatives of the public authorities, academic institutions and public and private sector workers and entrepreneurs, in order to hold discussions and make recommendations for overcoming the current economic situation and the decline in oil prices. The Government regrets that FEDECAMARAS is still claiming to be excluded and marginalized even though many of its chambers of commerce and enterprises participate in dialogues, consultations, technical discussions, agreements and negotiations; in particular, many of its chambers of commerce are involved in the work of the aforementioned Council. In that connection, the Government explains that the Council's members include the chairpersons of the following FEDECAMARAS associations and enterprises: the Oil Board, a member of FEDECAMARAS; the Plastics Board, a member of the Venezuelan Confederation of Industrialists (CONINDUSTRIA) and of FEDECAMARAS; the Venezuelan Chemical and Petrochemical Industry Association (ASOQUIM), a member of CONINDUSTRIA and of FEDECAMARAS; Supracal Corp., a member of ASOQUIM and of FEDECAMARAS; and the Venezuelan Banking Association, a member of the Executive Board of FEDECAMARAS. The Government also emphasizes that, since its establishment, the Council has held various meetings and events and has set up round tables for the manufacturing, export, forestry, construction, automotive, agro-food, mining, hydrocarbon, petrochemical, tourism and telecommunications industries; the Government provides details on these meetings and activities in its observations. It also mentions loans and financing that have been provided to enterprises and entrepreneurs and the first Supply and Demand Forum (of the Integrated and Standardized Government Procurement System), in which over 500 enterprises participated. It reiterates that representatives of FEDECAMARAS affiliate enterprises and chambers of commerce have participated in all of these forums, meetings and round tables and that this is proof of its desire to promote and sustain such dialogue with the business sector and of the importance that it attaches to that sector's involvement in and incorporation into the country's productive economy. It also mentions various statements that the current and former chairpersons of FEDECAMARAS have made to the media, in which they acknowledged the existence of dialogue with the Government. It recalls that in three written communications sent to the Chairperson of FEDECAMARAS in October and December 2015, the People's Ministry for the Social Process of Labour expressed its willingness to give FEDECAMARAS a greater role in discussions with a view to the development of labour policies, laws and regulations. The Government therefore emphasizes that it maintains an ongoing dialogue with FEDECAMARAS and that while the business sector may consider that the outcome thereof is not entirely favourable to it, this does not mean that there is an absence of social dialogue.

617. Concerning recommendation (f), the Government states that:

- (i) With regard to the "Día a Día Practimercados" supermarket chain (hereinafter "the supermarket chain"), the Government reiterates that on 2 February 2015, an inspection

of the supermarket chain was carried out by a presidential commission and the Office of the National Superintendent for the Defence of Socio-Economic Rights (SUNDDE). They found irregularities in the distribution of goods, as a result of which Mr Manuel Andrés Morales Ordosgoitti and Mr Tadeo Arriechi, the chain's General Director and legal representative, respectively, were investigated. The Government adds that these people are, however, at liberty and that any additional information provided by the Public Prosecutor's Office will be forwarded to the Committee.

- (ii) With regard to the directors of Corporación Cárnica (hereinafter "the meat processing company"), the Government reiterates that on 30 January 2015, SUNDDE officials visited the establishment following complaints that it was overcharging for goods. This irregularity was verified during the inspection and led to the seizure of more than 44 tonnes of hoarded meat products. For this reason, Ms Tania Carolina Salinas, Ms Delia Isabel Ribas, Ms Anllerlin Guadalupe López Graterol, Mr Ernesto Luis Arenas Pulgar and Mr Yolman Javier Valderrama Santiago are currently being investigated by the Public Prosecutor's Office. The Government will forward to the Committee any additional information received from that Office.
- (iii) With regard to the FARMATODO pharmacy chain (hereinafter "the pharmacy chain"), the Government states that the managers of the pharmacy chain, Mr Pedro Luis Angarita and Mr Agustín Álvarez, are at liberty and have not been charged; it therefore requests that there be no further examination of this allegation.
- (iv) With regard to the alleged detention of the former Chairperson of CONINDUSTRIA, Mr Eduardo Garmendia, the Government reiterates that he was not detained; on the contrary, he received a summons and made his own way to the Bolivarian National Intelligence Service (SEBIN) headquarters in order to answer questions concerning his statements to a national newspaper concerning the impact that the *chikungunya* outbreak would have on productivity. The Government states that Mr Garmendia has acknowledged that these statements were made without evidence and that he was treated courteously by the SEBIN officials who questioned him; it requests the Committee not to pursue its examination of this matter.
- (v) The Government also reiterates that there is no record of any investigation of the Chairperson of ANSA, Mr Luis Rodríguez, who is at liberty. It therefore requests the Committee not to pursue its examination of this allegation. (The Government also reiterates that on 2 February 2015, an interview was held at SEBIN headquarters after Mr Rodríguez had expressed the desire to provide information on the "Día a Día Practimercados" case.)
- (vi) With regard to the Chairperson of the Venezuelan Association of Clinics and Hospitals, Mr Rosales Briceño, the Government reiterates that he was interviewed on 6 February 2015 in connection with statements that he had made and that he is not under investigation and is at liberty; it therefore requests the Committee not to pursue its examination of this allegation.

618. Concerning recommendation (h) from its previous examination of the case, the Government once again informs the Committee that article 236(8) of the Constitution empowers the President of the Republic, with prior authorization under an enabling act, to issue decrees with the force of law and that enabling acts must be approved by three-fifths of the members of the National Assembly in order to establish guidelines, objectives and the framework for matters delegated to the President of the Republic. The Government states that enabling acts lie within the competence of the President of the Republic, the discussion of legislation and draft legislation within that of the National Assembly, and national socio-economic policy within that of the executive branch in coordination with the other branches of government,

without prejudice to the country's existing and operational mechanisms for consultation and social dialogue.

- 619.** In its communication dated 23 May 2017, the Government sent its observations replying to the allegations of the complainant organizations of 8 May 2017. With respect to the allegations of intimidating attacks perpetrated against FEDECAMARAS, its affiliated organizations and its leaders, the Government refers to the information it provided to the Governing Body at its 329th Session (March 2017). Furthermore, in its observations, the Government affirms that: (i) the various measures that allegedly constituted attacks on various business sectors were not arbitrary and were carried out in accordance with the law and with the goal of protecting the population; (ii) the purchase of 50 per cent of agro-industrial production was carried out in accordance with its mandate to ensure the availability of commodities within the context of economic warfare and the creation of workers' production boards was carried out to promote the participation of the working class in the management of production, without replacing or opposing the trade union organization; (iii) the increase of the *cestaticket* (food voucher) was the result of its natural annual adjustment and the People's Ministry for the Social Process of Labour had asked FEDECAMARAS, in its communication dated 14 February 2017, to submit its proposals concerning the salary increase that was customary for Labour Day. The replies, received from FEDECAMARAS on 23 and 27 April 2017, did not contain any concrete proposals.

D. The Committee's conclusions

- 620.** *As regards recommendation (a) from its previous examination of the case (allegations of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, its leaders and affiliated companies), the Committee notes with deep regret that the Government is again using its reply to accuse the complainant organization and gives no indication that it has taken any measures to prevent acts and statements of stigmatization and intimidation, as the Committee recommended. Under the circumstances, the Committee is bound to reiterate its previous recommendation and urges the Government to take the requested measures without delay. The Committee recalls that, for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. This implies that, in so far as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers' organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 36]. The Committee again notes that, throughout its examination of this case, it has been witness to many serious accusations levelled against FEDECAMARAS by the Government and has noted with great concern the many allegations of attacks against this organization, emphasizing that, taken as a whole, these allegations create a climate of intimidation of employers' organizations and their leaders that is incompatible with the requirements of Convention No. 87. In this regard, the Committee regrets that it is bound to recall once again the principle whereby 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]. It firmly urges the Government to take all the necessary measures in this regard and with a view to the promotion of social dialogue based on respect.*
- 621.** *As regards recommendation (b) from its previous examination of the case (allegations of violence and threats directed against FEDECAMARAS and its member organizations and, specifically, the abduction and mistreatment of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz in 2010), the Committee takes*

note of the Government's reiterated observations that in 2015 Mr Antonio José Silva Moyega was sentenced to 14 years and eight months' imprisonment for the crimes committed in 2010 and that it has been shown that the victims were not targeted because they were FEDECAMARAS members. The Committee urges the Government to send it a copy of the ruling issued and to state whether other people were charged (providing information on any related proceedings and the outcome thereof) and whether FEDECAMARAS and the leaders concerned received compensation for the damage caused by these illegal acts. As regards the 2008 bomb attack on FEDECAMARAS headquarters, the Committee recalls that FEDECAMARAS indicated to the high-level tripartite mission that: (1) the person who planted the bomb (a police inspector, Mr Héctor Serrano) died as a result of the explosion; (2) on 26 February 2008, a complaint was filed with the Public Prosecutor's Office; (3) on 26 August 2009, the Public Prosecutor's Office issued a ruling ordering the case to be closed for lack of sufficient evidence to establish a guilty party, and this ruling was appealed by FEDECAMARAS; (4) on 6 May 2010, the Forensic, Penal and Criminal Investigations Unit (CICPC) announced that a public official (a police officer), Mr Crisóstomo Montoya, had been detained on charges of terrorism for having planted the explosive device (it is reported that he has been released) and that Ms Ivonne Márquez had also been implicated; (5) the 28th Court of First Instance scheduled the public hearing of the trial for 4 November 2011 and the hearing was postponed until 30 October 2013; and (6) to date, no one has been found guilty of the attack. While noting the Government's reiteration that the perpetrator has died and that the case has therefore been closed, the Committee again insists that the Government send its observations on the points raised by FEDECAMARAS and, in particular, to inform it of the outcome of the appeal against the closing of the case and on any investigation carried out in order to determine whether anyone else was involved in the attack, and thus to shed light on its motive and to prevent any recurrence.

- 622.** *As regards recommendation (c) (seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders) and (d) (bipartite and tripartite social dialogue) from its previous examination of the case, the Committee observes that the Government has reiterated its previous remarks and emphasized that there is broad, inclusive social dialogue in the country. On the one hand, the Committee takes note of the Government's various initiatives; its statement that FEDECAMARAS, its leaders and its affiliates have met with various government authorities on countless occasions and, in particular, that many FEDECAMARAS chambers of commerce, enterprises and members participate actively in the work of the National Council on the Productive Economy and in other forums; and its mention of other forms of dialogue, such as written communications. On the other hand, the Committee notes that FEDECAMARAS challenges these statements and, in particular, states that it was not invited to become a member of the Council; that the Government has not replied to its communications; that the President of the Republic has publicly declared that he was not prepared to engage in any dialogue with FEDECAMARAS; and that the Government has failed to honour the undertaking to establish dialogue round tables with FEDECAMARAS that it made before the Governing Body of the ILO: (i) in March 2016, the Government presented an action plan that provided for the establishment of a round table for dialogue between representatives of the Government and of FEDECAMARAS and included a schedule of fortnightly meetings, but the round table has not been established; and (ii) in November 2016, the Government undertook to include FEDECAMARAS in the future socio-economic dialogue round table but although the Ministry of Labour and FEDECAMARAS held two meetings in January 2017, there has been no progress in establishing such a round table on the plan of action announced to the Governing Body. While welcoming the two meetings held in January 2017, the Committee again observes that the Government has provided no information on implementation of the plan of action recommended by the Governing Body as a result of the high-level tripartite mission conducted in 2014. While deeply deploring the lack of information and progress in this regard and in light of the Governing Body's decision of 24 March 2017 (in the examination of a complaint presented by virtue of article 26 of the ILO Constitution against*

the Bolivarian Republic of Venezuela alleging non-compliance with Conventions Nos 26, 87 and 144, in which the Government was urged to institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues, including matters relating to the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders), the Committee reiterates its recommendation and insists on the urgency of the Government taking the requested measures without delay.

- 623.** *As regards recommendation (e) from its previous examination of the case (action to create a climate of trust and, in particular, the appointment of a representative of FEDECAMARAS to the Higher Labour Council or the tripartite social dialogue body fulfilling its functions), the Committee regrets that the Government has made no observations in this regard. In line with the conclusions of the high-level tripartite mission, the Committee again urges the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee urges the Government to inform it of any measures taken in this regard.*
- 624.** *As regards recommendations (f) and (g) from its previous examination of the case (detention of employers or leaders), in the case concerning the supermarket chain, the Committee takes note of the Government's statements indicating that irregularities in the distribution of goods were found and that the chain's General Director and legal representative, respectively, were investigated but are now at liberty. In the case concerning the directors of the meat processing company, the Committee takes note of the Government's statement that Ms Tania Carolina Salinas, Ms Delia Isabel Ribas, Ms Anllerlin Guadalupe López Graterol, Mr Ernesto Luis Arenas Pulgar and Mr Yolman Javier Valderrama Santiago are currently being investigated by the Public Prosecutor's Office. Deeply deploring that the requested additional information on the allegations against each of the seven people under investigation has not been provided, the Committee urges the Government not merely to give an indication of general criminal offences, but to indicate the specific allegations against each of the people under investigation or trial by the judicial authorities and to provide precise information on the progress of the respective judicial proceedings. Also in the case of the meat processing company, regretting that the Government has simply reiterated the statements made in its previous communication, the Committee urges it to state whether these employers and leaders have been subjected to precautionary or detention measures and again requests the authorities to consider lifting any preventive detention measures imposed on them. In the case of the pharmacy chain, the Committee takes note of the Government's statement that the chain's managers, Mr Pedro Luis Angarita and Mr Agustín Álvarez, are at liberty and have not been charged. With regard to the alleged detention of the former Chairperson of CONINDUSTRIA, Mr Eduardo Garmendia, the Chairperson of ANSA, Mr Luis Rodríguez, and the Chairperson of the Venezuelan Association of Clinics and Hospitals, Mr Rosales Briceño, the Committee takes note of the fact that the Government reiterates that they have not been detained or investigated but were merely interviewed at SEBIN headquarters and that all of them are at liberty. The Committee underlines that the high number of employers and employers' organizations' leaders who were convened at SEBIN does not help creating a climate of trust free of pressure and threats.*
- 625.** *As regards recommendation (h) from its previous examination of the case (adoption by the President of the Republic of a large number of decree-laws on important economic and production-related issues without consulting FEDECAMARAS), the Committee notes with regret that the Government merely repeats information that it has already provided on the constitutional legal basis empowering the President of the Republic to issue decrees with the force of law, without making any observation concerning their relevance for or impact on social dialogue. The Committee is bound to point out once again that, over the years, when examining various complaints relating to the Bolivarian Republic of Venezuela, it has*

*noted the use in many cases of enabling legislation by the Legislative Assembly empowering the President of the Republic to adopt many decrees and laws that affect the interests of workers' and employers' organizations without a parliamentary debate being held [see, in particular, Case No. 2698, 368th Report, para. 1020]. The Committee emphasizes that it is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Government must also ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations [see **Digest**, op. cit., para. 1071]. The Committee has also emphasized the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests and has drawn the attention of governments to the importance of prior consultation of employers' and workers' organizations before the adoption of any legislation in the field of labour law [see **Digest**, op. cit., paras 1072 and 1073]. Deeply deploring the persistent nature of this situation, the Committee firmly urges that full consultations on draft legislation covering labour, economic or social matters that affect their interests and those of their members be held without delay with the most representative organizations of workers and employers, including FEDECAMARAS.*

- 626.** *The Committee notes with great concern the new allegations made by the IOE and FEDECAMARAS on 8 July 2016 and 8 May 2017 to the effect that: (i) the Government has failed to honour the undertaking to establish dialogue round tables that it made before the Governing Body of the ILO, and the highest-level state bodies have refused to enter into dialogue with FEDECAMARAS; (ii) further acts of intimidation have been directed against FEDECAMARAS, its affiliated organizations and their leaders by public figures and officials, including the President of the Republic, and the public has been called upon to mobilize against FEDECAMARAS; (iii) government authorities have launched attacks on the business sector and have attacked and detained leaders, employees and shareholders, accusing them of corruption or economic destabilization and subjecting them to public ridicule without guaranteeing due process or their right of defence; (iv) FEDECAMARAS has not been made a member of the National Council on the Productive Economy and has been excluded through new government measures that have an impact on business performance and undermine freedom of association, such as the approval, without consultation, of the purchase from farmers of 50 per cent of agro-industrial production for use by local supply and production committees and the creation of workers' production boards and other bodies through which the Government is interfering with relations between workers and employers; and (v) additional increases in the minimum wage and the cestaticket (food voucher) have been approved without tripartite consultation and two more states of economic emergency that suspended the constitutional guarantees on economic matters have been declared through instruments that contain intimidating claims that the country's economic agents have taken a hostile, destabilizing attitude, including by hindering access to essential public goods and services. On the other hand, the Committee observes that, in its communication dated 23 May 2017, the Government provides its observations replying to the allegations of the complainant organizations of 8 May 2017, affirming, in particular that: (i) it had responded to the allegations of intimidating attacks against FEDECAMARAS, its affiliated organizations and its leaders, before the Governing Body during its 329th Session (March 2017); (ii) the various measures that allegedly constituted attacks to various business sectors were not arbitrary and were carried out in accordance with the law and with the goal of protecting the population; (iii) the purchase of 50 per cent of agro-industrial production was carried out in accordance with its mandate to ensure the availability of commodities within the context of economic warfare and the creation of workers' production boards was carried out to promote the participation of the working class in the management of production, without replacing or opposing the trade union organization; (iii) the increase of the cestaticket (food voucher) was the result of its natural annual adjustment and, with respect to the salary increase of May 2017, the opinion*

of FEDECAMARAS had been requested and no concrete response had been received. The Committee will examine these allegations and the reply at its next meeting, and requests the Government to communicate any additional relevant observations in this respect.

The Committee's recommendations

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

- (a) While once again expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, the Committee insists on the urgency of the Government taking strong measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela. The Committee strongly urges the Government to take all necessary measures to ensure that FEDECAMARAS is able to exercise its rights as an employers' organization in a climate that is free from violence, pressure or threats of any kind against its leaders and members and to promote, together with that organization, social dialogue based on respect.*
- (b) As regards the abduction and mistreatment in 2010 of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds), the Committee urges the Government to send a copy of the ruling by which one of the accused was sentenced and to state whether other people were charged (providing information on any related proceedings and the outcome thereof) and whether FEDECAMARAS and the leaders concerned received compensation for the damage caused by these illegal acts. As regards the February 2008 bomb attack on FEDECAMARAS headquarters, the Committee again insists that the Government send its observations on the points raised by FEDECAMARAS and, in particular, on the outcome of the appeal against the closing of the case and on any investigation carried out in order to determine whether anyone else was involved in the attack, and thus to shed light on its motive and to prevent any recurrence.*
- (c) As regards the structured bodies for bipartite and tripartite social dialogue that need to be established in the country; the plan of action to be established in consultation with the social partners with stages and specific time frames for implementation with the technical assistance of the ILO, as recommended by the Governing Body; and the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee deeply deplores the lack of information and further progress in this regard. It recalls that the conclusions of the mission refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee also recalls that at its March 2017 session, in examining the complaint presented under article 26 of the ILO Constitution against the Bolivarian Republic of Venezuela alleging*

non-compliance with Conventions Nos 26, 87 and 144, the Governing Body urged the Government to institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues, including matters relating to the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders. The Committee insists on the urgency of the Government adopting immediately tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission and the Governing Body. Deeply deploring that the Government has not yet provided the requested plan of action, the Committee once again urges it to implement fully without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon.

- (d) The Committee, in line with the conclusions of the high-level tripartite mission, again urges the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee urges the Government to inform it of any measures taken in this regard.*
- (e) The Committee, having noted the Government's observations concerning the allegations of detention and trial of employers and leaders in various sectors, deeply deplores that once again a full answer has not been provided in relation to the individuals who are the subject of investigation procedures. As regards the cases of the meat processing company and the supermarket chain, the Committee urges the Government not merely to give an indication of general criminal offences but to indicate the specific allegations against each of the people under investigation or trial by the judicial authorities and to provide precise information on the progress of the respective judicial proceedings. Furthermore, in the case of the meat processing company, the Committee urges the Government to state whether these employers and leaders have been subjected to precautionary or detention measures and again requests the authorities to consider lifting any preventive detention measures imposed on them.*
- (f) As regards the adoption by the President of the Republic of numerous decrees-laws on important economic and production-related issues without consulting FEDECAMARAS, deeply deploring that the Government has not made any observations concerning their impact on social dialogue and the persistent nature of this situation, the Committee firmly urges that full consultations on draft legislation covering labour, economic or social matters that affect their interests and those of their members be held without delay with the most representative organizations of workers and employers, including FEDECAMARAS.*
- (g) The Committee expresses its deep concern at the lack of information and progress on the above issues and urges the Government to take all the requested measures without delay.*

- (h) *The Committee will examine the new allegations, made by the IOE and FEDECAMARAS and the reply of the Government thereto at its next meeting and requests the Government to send further relevant observations in this respect.*
- (i) *The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.*

CASE No. 3082

DEFINITIVE REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by

- **the National Union of Workers of Venezuela (UNETE)**
- **the Federation of Bolivarian Trade Unions of the State of Carabobo (FUSBEC)**
and
- **the Single Union of Workers of Galletera Carabobo (SINTRAEGALLETERA)**

Allegations: Imposition of compulsory arbitration after a breakdown of collective bargaining in the enterprise Galletera Carabobo and violent break-up of a trade union demonstration and arrest of trade unionists

- 628.** The Committee last examined this case at its May–June 2015 session and presented an interim report to the Governing Body [see 375th Report, paras 666–693, approved by the Governing Body at its 324th Session (June 2015)].
- 629.** The Government sent additional observations in communications dated 9 October 2015.
- 630.** The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 631.** In its previous examination of the case at its May–June 2015 session, the Committee made the following recommendations on the matters still pending [see 375th Report, para. 693]:
- (a) The Committee requests the Government to ensure that intervention of the forces of law and order in trade union demonstrations to defend their occupational interests is in due proportion to the danger to law and order that the authorities are attempting to control and to bear in mind that governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence and should not resort to arrests in the absence of clear grounds for filing criminal charges against demonstrators. The Committee requests the Government to ensure respect for these principles.
 - (b) The Committee requests the complainant organizations to provide additional information on the allegations regarding arbitration and interference by the authorities.

B. The Government's reply

- 632.** In its communication of 9 October 2015, the Government states that peaceful protest is a legitimate right enshrined in the country's Constitution and that the State respects the exercise of this right to protest as long as it does not endanger the lives or the physical, psychological and moral integrity of the rest of the population, freedom of movement, public order and the security of the nation. The Government recalls that the exercise of civil, political and labour rights cannot be invoked to commit unlawful acts. It adds that it is the responsibility of the State to protect citizens, property and institutions from unlawful acts committed during violent protests. The Government also maintains that the actions of the police and security forces are in strict conformity with the law and that only in circumstances involving unlawful acts against individuals, properties or institutions are they called upon to fulfil their duty to protect the latter.
- 633.** Moreover, the Government emphasizes that the right to strike is also enshrined in the national Constitution, and therefore all workers may exercise this right while fulfilling the requirements of the law. However, no individual, while exercising the right to strike, may commit unlawful acts involving the obstruction of free movement, damage to property, people or institutions, or any other offence or crime. The Government indicates that the security forces intervene only when acts are committed which violate the law currently in force and that the procedures, methods and decisions of the judicial bodies are firmly grounded in the law.
- 634.** The Government stresses that there has been no action or omission on the part of the Venezuelan Government which could be presented as a violation of the principles of freedom of association, the right to organize or the right to strike and that the Government is a guardian of these principles. It therefore requests the Committee to stop making unfounded statements to the effect that the Government is not complying with these principles.
- 635.** Lastly, the Government requests the Committee not to pursue its examination of the allegations concerning arbitration and interference by the authorities if the complainant organizations have not provided additional information and therefore calls for the case to be closed.

C. The Committee's conclusions

- 636.** *The Committee takes note of the Government's statements with regard to recommendation (a) from its previous examination of the case, in which the Committee requested the Government to ensure that intervention of the forces of law and order in trade union demonstrations to defend their occupational interests was in due proportion to the danger to law and order that the authorities were attempting to control and to bear in mind that governments should take measures to ensure that the competent authorities received adequate instructions so as to eliminate the danger entailed by the use of excessive violence and should not resort to arrests in the absence of clear grounds for filing criminal charges against demonstrators. The Committee firmly expects that the Government will ensure that this recommendation is fully implemented.*
- 637.** *Regarding recommendation (b) of its previous examination of the case, the Committee notes that the complainant organizations have not provided the requested additional information on the allegations regarding arbitration and interference by the authorities. Under the circumstances, the Committee will not pursue its examination of these allegations.*

The Committee's recommendation

638. *In the light of its foregoing conclusions, and firmly expecting that the Government will ensure the full implementation of its recommendation concerning the intervention of the forces of law and order in trade union demonstrations, the Committee invites the Governing Body to decide that this case does not call for further examination.*

Geneva, 9 June 2017

(Signed) Professor Paul van der Heijden
Chairperson

Points for decision:

paragraph 176	paragraph 427
paragraph 189	paragraph 449
paragraph 209	paragraph 466
paragraph 226	paragraph 483
paragraph 250	paragraph 499
paragraph 274	paragraph 518
paragraph 296	paragraph 543
paragraph 314	paragraph 583
paragraph 354	paragraph 601
paragraph 379	paragraph 627
paragraph 392	paragraph 638