



Governing Body

324th Session, Geneva, 13 June 2015

GB.324/INS/6

Institutional Section

INS

SIXTH ITEM ON THE AGENDA

Report of the Committee on Freedom of Association

375th 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 28, 29, 30 May and 5 June 2015, under the chairmanship of Professor Paul van der Heijden.
2. The following members participated in the meeting: Mr Albuquerque (Dominican Republic), Mr Cano (Spain), Ms Onuko (Kenya), Mr Teramoto (Japan), Mr Titiro (Argentina), Mr Tudorie (Romania); Employers' group spokesperson, Mr Syder, and members Mr de Regil, Mr Echavarría, Mr Frimpong, Ms Horvatic and Mr Matsui; Workers' group spokesperson, Mr Veyrier and members Mr Asamoah, Ms Mary Liew Kiah Eng, Mr Martínez, Mr Ohrt and Mr Ross. The members of Colombian and Dominican Republic nationality were not present during the examination of the case relating to Colombia (Case No. 3063) and the Dominican Republic (Case No. 3017).

* * *

3. Currently, there are 137 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 27 cases on the merits, reaching definitive conclusions in 19 cases and interim conclusions in eight cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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

4. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2508 (Islamic Republic of Iran) and 2923 (El Salvador) because of the extreme seriousness and urgency of the matters dealt with therein.
5. In relation to Case No. 2254 (Bolivarian Republic of Venezuela), the Committee expresses its deep concern over the lack of progress on the recommendations that it has been formulating for years regarding the extremely serious issues that have been persistently affecting employers' organizations, their leaders as well as their affiliates for many years, especially in view of the fact that the Committee's requests are based on the recommendations of the high-level tripartite mission and the action plan adopted by the Governing Body. The Committee calls upon the Government to urgently give effect to its recommendations.

Hearing of a government

6. As indicated in its 374th Report, the Committee, having recourse to paragraph 69 of its procedure, had an in-depth discussion with the Government of Cambodia regarding long-standing serious matters for which the Government had not been providing the information requested (Cases Nos 2318 and 2655). The Committee welcomes the constructive engagement of the Cambodian Government in this process, having provided both written communications and an oral presentation, and would like to express its appreciation for the cooperative spirit demonstrated by the Government. The Committee expects that the Government will provide further information on the concrete steps taken to implement its

recommendations on these grave matters so that it will be in a position to note significant progress when it examines these two cases at its next meeting in October–November 2015.

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

7. The Committee deeply regrets that it was obliged to examine the following cases without a response from the government: 2753 (Djibouti), 3070 (Benin), 3105 (Togo).

Urgent appeals

8. As regards Cases Nos 2723 (Fiji), 2949 (Swaziland), 2989 (Guatemala), 2994 (Tunisia), 3067 (Democratic Republic of the Congo), 3076 (Republic of Maldives), 3081 (Liberia), 3086 (Mauritius), 3091 (Colombia), 3094 (Guatemala), 3095 (Tunisia), 3099 (El Salvador), 3101 (Paraguay), 3102 (Chile) and 3104 (Algeria), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

New cases

9. The Committee adjourned until its next meeting the examination of the following cases: 3119 (Philippines), 3120 (Argentina), 3121 (Cambodia), 3122 (Costa Rica), 3123 (Paraguay), 3124 (Indonesia), 3125 (India), 3126 (Malaysia), 3127 (Paraguay) and 3128 (Zimbabwe), since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Observations requested from governments

10. The Committee is still awaiting observations or information from the governments concerned in the following cases: 2177 and 2183 (Japan), 2318 (Cambodia), 2620 (Republic of Korea), 2882 (Bahrain), 2982 (Peru), 3069 (Peru), 3093 (Spain), 3107 (Canada), 3108 (Chile), 3109 (Switzerland), 3110 (Paraguay), 3111 (Poland), 3112 (Colombia), 3114 (Colombia), 3116 (Chile), 3117 (El Salvador) and 3118 (Australia).

Partial information received from governments

11. In Cases Nos 2203 (Guatemala), 2265 (Switzerland), 2445 (Guatemala), 2673 (Guatemala), 2743 (Argentina), 2811 (Guatemala), 2817 (Argentina), 2824 (Colombia), 2830 (Colombia), 2869 (Guatemala), 2889 (Pakistan), 2897 (El Salvador), 2902 (Pakistan), 2927 (Guatemala), 2948 (Guatemala), 2967 (Guatemala), 2978 (Guatemala), 2987 (Argentina), 2997 (Argentina), 3003 (Canada), 3007 (El Salvador), 3023 (Switzerland), 3027 (Colombia), 3040 (Guatemala), 3042 (Guatemala), 3047 (Republic of Korea), 3048 (Panama), 3061 (Colombia), 3062 (Guatemala), 3078 (Argentina), 3089 (Guatemala), 3090 (Colombia), 3092 (Colombia), 3103 (Colombia), 3106 (Panama) and 3115

(Argentina), 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

12. As regards Cases Nos 2609 (Guatemala), 2655 (Cambodia), 2761 (Colombia), 2786 (Dominican Republic), 2957 (El Salvador), 2958 (Colombia), 2970 (Ecuador), 2982 (Peru), 3016 (Bolivarian Republic of Venezuela), 3017 (Chile), 3019 (Paraguay), 3032 (Honduras), 3035 (Guatemala), 3046 (Argentina), 3051 (Japan), 3053 (Chile), 3055 (Panama), 3060 (Mexico), 3064 (Cambodia), 3068 (Dominican Republic), 3072 (Portugal), 3074 (Colombia), 3075 (Argentina), 3079 (Dominican Republic), 3083 (Argentina), 3087 (Colombia), 3088 (Colombia), 3096 (Peru), 3097 (Colombia), 3100 (India) and 3113 (Somalia), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Article 26 complaint

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

Transmission of cases to the Committee of Experts

14. The Committee draws the legislative aspects of the following cases, as a result of the ratification of Conventions Nos 87 and 98 to the attention of the Committee of Experts on the Application of Conventions and Recommendations: 3004 (Chad), 3025 (Egypt).

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

Case No. 2870 (Argentina)

15. The Committee last examined this case at its November 2012 meeting [see 365th Report, paras 216–235]. The Committee recalls that the complainant organization, the Federation of Energy Workers of the Argentine Republic (FETERA), alleged obstacles and an 11-year delay in processing the application for trade union status filed with the labour administrative authority at its November 2012 session. In examining the case, the Committee made the following recommendations [see 365th Report, para. 235]:
 - (a) The Committee regrets the length of time that has elapsed (12 years) since the complainant's request for trade union status and recalls that a long delay in the procedure constitutes a serious obstacle to the exercise of trade union rights.
 - (b) The Committee urges the Government to verify the percentages of membership to determine which of the two trade unions in question (FETERA in the areas of coverage requested or the organization with trade union status referred to by the Government) is most representative. If the complainant organization is found to be more representative than the organization with trade union status, the Committee requests the Government to grant it the trade union status it has been requesting since 2000.

16. In a communication from February 2013, FETERA sent additional information in relation to the complaint, recalling that it: (1) is a second-level organization registered as a union since 10 February 1998; (2) groups together all the first-level organizations representing workers employed in the production, exploitation, sale, transmission, transport and distribution of energy, broadly defined, or derivatives required for the production of energy, at every stage, and who work for private employers, the State at national, provincial or municipal level, cooperatives or employee stock ownership companies, whether as operators, administrative employees, technicians or managers, with coverage across Argentina; and (3) started the application procedure for the federation in 2000, and then in 2008 adjusted the application for trade union status to cover the areas of its member organizations, the Light and Power Workers' Union of Mar del Plata and the Association of Professional Workers of the National Atomic Energy Commission and the Nuclear Sector.
17. FETERA adds that, although the Committee urged the Government to expedite the application, the Committee had asked the Government to perform the comparative count (verifying the percentages and membership) in the manner provided for in section 28 of Act No. 23551 on Trade Union Associations. Were this to happen, it would seriously violate the freedom of association of the organization and its members. The complainant organization recalls that both the Committee and the Committee of Experts on the Application of Conventions and Recommendations called into question the counting procedure set out in this law.
18. In reference to the complaint, FETERA alleges that the Government misled the Committee by maintaining that "in view of the personal coverage claimed by FETERA and of the existence of another organization at the same level competing for similar status, the provisions of section 28 of Act No. 23551 apply". FETERA affirms that the system set forth in section 28 of Act No. 23551 is applicable in cases in which the competition for trade union status is between two first-level unions. Section 28 is in other words not applicable when the application for trade union status is by a federation, confederation or workers' central organization, irrespective of whether or not there are already bodies at the same level and scope which enjoy trade union status (the complainant organization indicates that the Ministry of Labour has often stated that the trade union status of a second- or third-level trade union body must be in line with the geographical area and category of persons recognized in the status of the trade unions which make up that trade union association. Trade union status has, for example, been granted in this way to the Argentine Federation of Pastry, Cake, Ice Cream, Pizza and Biscuit Makers, the Federation of Government Professionals of the Autonomous City of Buenos Aires and the National Taxi Drivers' Federation (FEPETAX)).
19. FETERA goes on to state that, when counting dues-paying members, under the procedure covered by section 28: "if another association of workers with trade union status exists, the same status can be granted to another association to carry out its activity in the same area, occupation or category, only if the number of dues-paying members of the applicant association, for a continuous period of at least six months prior to the application, was considerably larger than that of the existing association with trade union status". FETERA claims that in reality it is almost impossible for a trade union seeking trade union status to replace an existing trade union. This is on account of a number of factors, including the requirement to count "dues-paying members". This requirement relates to section 38 of Act No. 23551, which obliges employers to deduct union fees solely for bodies with trade union status. FETERA maintains that, since a trade union which does not have trade union status must collect its fees in person, each month receiving the relevant amount from each of the members, the body seeking trade union status is at a clear disadvantage when it comes to replacing other unions, given that it is specifically its "dues-paying" members who are counted. Lastly, FETERA points out that under sections 23 and 31 of the Act on

Trade Union Associations, a trade union which does not enjoy union status lacks the basic legal rights to represent its members adequately. This shortcoming not only applies to collective bargaining, but also implies, for example, that its directors and members are not protected or cannot call a strike.

20. *The Committee regrets that, despite the time which has elapsed since additional information was sent by the complainant organization, the Government has not sent its observations on the matter. The Committee recalls that it has already had the occasion to note “with concern that, for a number of years, it has had to examine cases relating to Argentina concerning allegations of excessive delays – between three and four years – in the processing of applications for trade union status [see, for example, 307th Report, Case No. 1872, paras 45–54; 309th Report, Case No. 1924, paras 45–55; 338th Report, Case No. 2302, paras 346–358; 346th Report, Case No. 2477, paras 209–246; and 348th Report, Case No. 2515, para. 211]”. On that occasion too, the Committee recalled that as early as 1997 it urged the Government to take the necessary measures to ensure that in the future, when an organization requests registration or the granting of recognition, the competent administrative authorities return their decisions without unjustified delay” [see 307th Report, op. cit., paras 54 and 211]. Lastly, the Committee requested the Government to “take, in consultation with representatives of workers’ and employers’ organizations, the necessary steps to amend section 28 of the Act, under which, in order to challenge another association’s trade union status, the petitioning association must have a ‘considerably larger’ membership, and section 21 of implementing Decree No. 467/88, which qualifies the term ‘considerably larger’ by laying down that the association claiming trade union status should have at least 10 per cent more dues-paying members than the organization which currently holds the status” [see 348th Report, Case No. 2515, para. 214].*
21. *In these circumstances, the Committee urges the Government to take the necessary measures without delay so that: (a) the trade union status for which FETERA has been applying for over 14 years is awarded; and (b) in consultation with the social partners, all the provisions of the Act on Trade Union Associations (No. 23551) which do not conform to the principles of freedom of association are amended as recommended by the ILO supervisory bodies. The Committee requests the Government to keep it informed in this regard.*

Case No. 2775 (Hungary)

22. The Committee last examined this case which concerns alleged acts of anti-union discrimination, harassment and intimidation at its June 2011 meeting [see 360th Report, paras 666–742]. On that occasion the Committee requested the Government to provide its own observations with respect to the specific cases of alleged interference and anti-union discrimination. In particular, as regards the termination of employment of several union members at the Celelbi GHH Kft, the Committee requested the Government and the complainant to indicate whether the nine remaining union members dismissed in March 2009 (Péter Huszka, Gábor Dobrovinszky, Miklós Varga, László Dömötör, András Péter Fazekas, János Szigeti, Péter Márkus, Gábor Kenyeres and Rudolf Faragó) have initiated judicial proceedings and, if so, to keep it informed of their final outcome. The Committee also requested to be kept informed of the final ruling concerning László Cserhádi as soon as it is handed down. The Committee further requested the Government and the complainant to indicate whether Ms Marica Merzei has initiated legal proceedings and to inform it of the final ruling concerning the termination of employment of union officials Ferenc Borgula and Attila Mercz. The Committee expected that, should it be found that the abovementioned union members were dismissed due to their trade union affiliation or legitimate trade union activities (such as candidature at works council elections), they would be reinstated in their position without loss of pay or, in the event that, given the time

elapsed, their reinstatement would be impossible for objective and compelling reasons, they would receive adequate compensation so as to constitute a sufficiently dissuasive sanction against anti-union dismissals. With respect to the alleged intimidation and harassment of a union official and union members who were candidates in the works council elections, the Committee requested the Government and the complainant to indicate whether any of the abovementioned employees have initiated judicial proceedings and, if so, to keep it informed of their final outcome. Finally, as regards the general anti-union climate alleged by the complainant, the Committee, with reference to the relevant observations that the Committee of Experts had been making for many years, requested the Government to adopt specific legislation ensuring the adequate protection of workers' organizations against acts of interference by the employer and establishing rapid appeal procedures coupled with effective and dissuasive sanctions against such acts.

23. As regards RÜK Kft, the Committee asked the Government and the complainant to indicate whether any of the five union members and two officials concerned had initiated judicial proceedings against the employer in regard to the alleged acts of harassment and intimidation, and, if so, to keep it informed of their final outcome.
24. As regards Budapest Airport Zrt, the Committee asked the Government and the complainant to indicate whether any of the contract workers (Ágnes Szathmári, Katalin Jávor, Dániel Linguár, Róbert Tóth, László Icsó, Kitti Szekeres) had initiated judicial proceedings for non-renewal of fixed-term contracts following the December 2008 strike. As to the alleged dismissal of union members Katalin Zsekov and Anikó Hirmann following strike action, and noting the court ruling in favour of Katalin Zsekov, the Committee asked the Government and the complainant to indicate whether Anikó Hirmann had initiated judicial proceedings and to forward the decision on appeal concerning Andrea Kiss as soon as it is rendered.
25. As regards the alleged intimidation of all union members in the Healthcare Centre, the Committee requested the Government to institute an independent inquiry to establish the facts and to ensure that any acts of intimidation or harassment identified are adequately remedied and, where appropriate, that sufficiently dissuasive sanctions are imposed so that such acts do not recur in the future.
26. In its communication dated 23 February 2012, the Government indicates, with regard to the delayed judicial proceedings, that owing to the separation of powers and the constitutional principle of judicial independence and impartiality, it could not take any measures to accelerate ongoing legal proceedings. The Government adds that a new law establishing a new administrative model for a more effective operation of the judicial system entered into force on 1 January 2012 and that the recommendations of the Committee have been forwarded to the National Judicial Office in charge of coordinating the operation of courts. The Government indicates, in respect of the Committee's request for observations on specific cases of alleged interference and anti-union discrimination, that Hungarian law guarantees the right of association and that the prohibition of anti-union discrimination is adequately enforced by appropriate institutions as is exemplified, according to the Government, by the judgments in the current legal proceedings which ordered employers guilty of infringement to compensate. The Government adds that, with regard to the specific cases referred to by the Democratic League of Independent Trade Unions (LIGA), it does not intend to take up further position as they are ongoing cases before the competent courts.
27. The Government further indicates in its communication that it does not consider it justified to adopt further specific legislation to ensure the adequate protection of workers' organizations against acts of interference by the employer as it considers that Hungarian laws, such as the Fundamental Law of Hungary or the Labour Code, already provide for

specific provisions aimed at protecting the workers' organizations. These protections include, inter alia, the prohibition to render employment, entitlement or benefit contingent upon affiliation or lack of affiliation with any trade union, obligation of the employer to ensure time off for the trade union official and the prohibition for the employer to dismiss a trade union official without the prior consent of the relevant supervisory trade union organization. The Government adds that these provisions are complemented by adequate sanctions that range from imposition of fines to making state financial aid to employers contingent on compliance with labour laws and that a new Labour Code set to enter into force on 1 July 2012 will further guarantee the right of association and the autonomous operation of trade unions in accordance with the Conventions Nos 87 and 98.

28. In response to the request to institute an independent inquiry to establish the facts relating to the alleged intimidation in the Healthcare Centre, the Government indicates that there are legal and administrative mechanisms to ensure the conduct of an independent inquiry and that, in this case, the facts have already been sufficiently established by the Equal Treatment Authority in decision EBH/39/2010/3 wherein it determined that the worker had not been harassed because of their union membership or position in the union. The Government indicates that the decision was appealed and that it will keep the Committee informed of the results of the administrative proceedings.
29. *The Committee takes due note of the information provided by the Government. With regard to the protracted judicial proceedings, the Committee notes the Government's indication that the constitutional principles of separation of powers and independence of the judiciary prevent it from adopting any measures to expedite the legal proceedings. The Committee notes however with interest the forwarding of its recommendations in this regard to the National Judicial Office in charge of coordinating the operation of courts and requests to be kept informed of any action taken.*
30. *In relation to the request for observations on specific cases of alleged interference and anti-union discrimination, while noting the general information provided by the Government on the general guarantees offered by the Hungarian legislation, the Committee regrets that the Government has not provided its own observations on the allegations five years after the complaint was lodged. Recalling the importance for the government's own reputation to formulate detailed replies to the allegations brought by complainant organizations so as to allow the Committee to undertake an objective examination and that in all the cases presented to it since it was first set up the Committee has always considered that the replies of governments against whom complaints are made should not be limited to general observations [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 24–25], the Committee trusts that the Government will soon be in a position to submit detailed information on outstanding matters in this case, including through any judicial decisions rendered.*
31. *As regards the Committee's recommendation to adopt specific legislation ensuring the adequate protection of workers' organizations against acts of interference by the employer and establishing rapid appeal procedures, the Committee observes that the new Labour Code does not appear to cover all forms of anti-union interference. The Committee therefore invites the Government to take additional measures for the protection of workers' organizations from interference and reminds the Government of the possibility to avail itself of the technical assistance of the Office. The Committee refers the legislative aspect of this case, as a result of the ratification of Conventions Nos 87 and 98, to the Committee of Experts on the Application of Conventions and Recommendations which is already dealing with this matter.*

32. *In relation to the request to institute an independent inquiry to establish the facts relating to the alleged intimidation in the Healthcare Centre, the Committee, noting the Government's indication that the facts in question had been established by means of an independent procedure of the Equal Treatment Authority, observes that the Government reiterates information regarding solely one union member, i.e. Edit Kranczné Majoros whose appeal of decision EBH/39/2010/3 (which found that no harassment on account of union membership or position had taken place) is still pending, whereas the allegations concerned 11 union members who resigned from the union out of fear for their jobs. The Committee therefore requests the Government to provide information regarding the facts surrounding the resignation of the other union members in the Healthcare Centre and to indicate whether the appeal procedure in the case of Ms Majoros has been concluded.*

Case No. 2777 (Hungary)

33. The Committee last examined this case, in which the complainant alleged that the detailed requirements for the registration of trade unions imposed by courts have resulted in delays of registration, at its June 2011 meeting [see 360th Report, paras 743–781]. On that occasion, the Committee: (1) expressed its expectation that, in the future, on matters relating to the scope of union membership, devolution of trade union assets, determination of union dues, employers' consent to union establishment, use of headquarters and content requirement for by-laws, account will be taken of the principles set out in its conclusions; (2) expected that all necessary measures will be taken to ensure that provisions regulating the structure of social organizations in a broader sense are not unduly extended to trade unions and the procedure for registering trade unions consists in a mere formality, in both law and practice; and (3) requested the Government to take the necessary steps to ensure that guidance is adopted, including through the review of the rules governing the registration of social organizations in consultation with the social partners concerned, which would ensure a clear and simple understanding of the concrete statutory conditions to be met by the unions for the purposes of registration and of the specific criteria to be applied by courts when deciding whether or not those conditions have been fulfilled and to keep it informed of any developments in this regard.
34. In a communication dated 16 July 2013, the Government indicates that new laws concerning the right of association entered into force in January 2012, among which is Act CLXXXI of 2011 on court registration of civil society organizations and related rules of proceeding (Act CLXXXI) containing the rules governing registration of trade unions by courts in respect of documents to be attached to the application for registration, the tasks of the court following the submission of such application and the conditions for refusal as well as the criteria for an in-depth evaluation of applications with special regard to the content. The Government adds that further provisions provide for an electronic registration procedure aimed at reducing the administrative burden and shortening the length of the registration process (maximum of 15 days), an electronic system of certified court records to facilitate compliance with registration requirements as well as a uniform summary of regulations and principles applied in judicial practices.
35. The Government indicates that the new Act CLXXV of 2011 on the right of association, non-profit status, and the operation and funding of civil society organizations which entered into force on 3 January 2012 does not, like its predecessor (Act II of 1989 on the rights of association), hinder trade unions from representing the interests of persons under different types of employment relationships nor does it prevent the latter from joining a trade union or other organizations representing their interests. With regard to the registration of Szent Flórián Association of Firefighters, the Government states that the court's ad hoc decision to limit the union's membership to persons falling under Act XLIII of 1996 on the service status of professional members of the armed services (Hszt) was based on an exceptional and unique interpretation of the law which is different from the

usual judicial practice, and adds that the union may join a higher-level firefighting trade union association in accordance with its amended statutes.

36. As regards the question of devolution of trade union assets, the Government states that, as was the case for the former Act II of 1989 which provided that the allocation of assets was to be conducted in accordance with the provisions of the organization's statutes, the new Act CLXXV also specifies that devolution of assets must primarily be governed by the organization's statutes and that the court's decision to request the amendment of the provisions on allocation of assets was based on a misinterpretation of the law in force at the time (Act II of 1989). The Government further states that provisions concerning the allocation of assets should not obstruct the registration of a trade union.
37. As regards trade union membership fee, the Government underlines that neither the former Act II of 1989 nor the current Act CLXXV carry special provisions on membership fees and that the determination of the amount of membership fee falls into the trade union's scope of regulatory activities. The Government reiterates that the court's ruling holding that the amount of the membership fee may not be determined as a percentage of the member's salary was based on an erroneous court interpretation and has since been remedied. Similarly, with respect to the employer's consent to the establishment of a union, the Government reiterates that it is not required as a condition for registration under Hungarian law and that the court's ruling in this respect was unique and exceptional as no more such rulings have been handed down during the period examined.
38. In relation to the use of headquarters, the Government maintained its position that it is a prerequisite of legal operation that the legal entity (any association, including trade unions) certify its right to use the real property designated as its registered seat; hence the requirement that the certificate evidencing the union's right to use its headquarters be attached to the application. The Government explains that the court ordered the correction of irregularities in respect of case T.60170/2008/2 because the signature of the person authorizing the use of the headquarters was missing on the certificate attached to the application, and, had the applicant been dissatisfied with this decision, they were free to apply for legal remedy by way of an appeal to the Court of Appeal. Therefore, the application by the courts of the provisions regarding the use of headquarters is in harmony with the guarantees concerning the free exercise of the right to organize.
39. *The Committee takes due note of the information provided by the Government, in particular the entry into force in January 2012 of Act CLXXXI which contains rules governing the registration of trade unions with respect to the required documents to be submitted with the application, the conditions for a refusal of registration and the criteria for an in-depth evaluation of the registration application with special regard to its content. The Committee also notes with interest that Act CLXXXI is intended to simplify the registration process by putting into place an electronic procedure that will shorten the length of the process (maximum of 15 days), an electronic system of certified court records to facilitate compliance with registration requirements as well as a uniform summary of regulations and principles applied in judicial practices. Noting the steps already undertaken by the Government and recalling that the formalities prescribed by law for the establishment of a trade union should not be applied in such a manner as to delay or prevent the establishment of trade union organizations and that any delay caused by authorities in registering a trade union constitutes an infringement of Article 2 of Convention No. 87 [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 279], the Committee, in line with the comment made by the Committee of Experts on the Application of Conventions and Recommendations on this issue, invites the Government to pursue in consultation with the social partners efforts aimed at simplifying the requirements for registration of workers' and employers' organizations and particularly to ensure that the conditions for the*

granting of registration are not tantamount to a de facto requirement for previous authorization from the public authorities to establish a trade union. The Committee requests the Government, as a result of its ratification of Conventions Nos 87 and 98, to provide a copy of Act CLXXXI to the Committee of Experts to which it refers the legislative aspects of this case.

- 40.** *As regards union membership scope in the case of Szent Flórián Association of Firefighters, the Committee notes with interest the Government's statement that the court's decision to limit membership to those employed under the Hszt was based on an exceptional and unique interpretation of the law different from the usual judicial practice and that the trade union may, if it so wishes, join a higher-level firefighting trade union association in accordance with its amended statutes.*
- 41.** *In relation to the devolution of the union's assets and the determination of membership fees and the use of headquarters, the Committee, welcoming the Government's statements – (1) that the court's interpretation according to which union membership fees cannot be determined as a percentage was erroneous and has since been remedied; and (2) that the decision to request the amendment of the provisions on allocation of assets was based on a misinterpretation of the law in force at the time (Act II of 1989) and that these provisions should not obstruct the registration of the organization – wishes to recall that in accordance with the principles of freedom of association these matters are to be governed primarily by the by-laws of the organizations themselves.*
- 42.** *As regards the court's decision to require the employer's consent to the establishment of a union as a prerequisite for the registration of a union, the Committee notes the Government's reiteration that such a precondition is in contradiction with the Hungarian laws on freedom of association and the right to organize. Further noting the Government's assurances that no more such rulings have been handed down by the courts, the Committee expects that the courts will continue upholding the principle prohibiting the requirement to obtain the employer's consent to the formation of a union as such a requirement indeed constitutes a clear violation of the principles of freedom of association.*

Case No. 2453 (Iraq)

- 43.** The Committee last examined this case – which concerns alleged acts of interference by the Government, including the seizure of organizational funds and interference in the trade unions' elections process – at its March 2012 meeting [see 363rd Report, paras 157–162, approved by the Governing Body at its 313th Session (March 2012)]. On that occasion, the Committee urged the Government to: (1) annul the regulations concerning the appointment of members of preparatory committees of federations, trade unions, associations and occupational organizations and to ensure in the future that the General Federation of Iraqi Trade Unions (GFITU) can conduct elections of its leaders in accordance with its statutes, without intervention by the authorities; (2) to indicate the steps taken to annul Decree No. 875 that allows the Government to take control of the finances of existing federations and unions; and (3) to return without delay all funds to the GFITU.
- 44.** In a communication dated 24 September 2013, the Government indicates that on 24 July 2012, the general assembly of the GFITU met and the executive bureau was elected on that occasion under the supervision of the Higher Judicial Council of Iraq and the control of competent parliamentary commissions, civil society organizations and the media, in accordance with national laws in force. The Government further indicates that the legitimacy of the elections and the removal of the seizure of the movable and immovable assets of the federation were acknowledged.

45. *The Committee notes with interest the information provided by the Government and, in particular, the election of the executive bureau of the GFITU which according to the Government was conducted under the supervision of the Higher Judicial Council of Iraq and the control of competent parliamentary commissions, civil society organizations and the media and was acknowledged as legitimate. The Committee also welcomes the Government's indication that the seizure of the Federation's movable and immovable assets was lifted.*

Case No. 2952 (Lebanon)

46. The Committee last examined this case concerning denial of trade union rights to employees in the public sector, obstacles raised to the establishment of independent trade unions in the private sector, and the Government's refusal to promote an inclusive and constructive social dialogue at its March 2013 session [see 367th Report, paras 863–880]. On that occasion, the Committee requested the Government to: (a) keep it informed of progress in the ratification process of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); (b) take the necessary measures without delay to lift the prohibition placed on public sector employees to establish and join organizations of their own choosing, and to allow them to exercise their trade union rights to the full; (c) state in what way workers who are excluded from the scope of the Labour Code (especially domestic workers, workers in the agricultural sector and contract workers in public administration) can enjoy their trade union rights and, if it is found that they cannot, to take all the necessary measures to secure these rights for them; (d) take the necessary steps to amend sections 86, 87, 89 and 105 of the Labour Code; and lastly, (e) specify which objective pre-established criteria enable it to determine which is the most representative organization, and if no such criteria exist, to take the necessary measures to define them, in full consultation with the social partners concerned.
47. In a communication dated 28 October 2013, the Government indicates that: (1) on 12 June 2012, the Ministry of Labour submitted to Parliament a draft law to authorize ratification of Convention No. 87, in accordance with Council of Ministers Decision No. 81; (2) regarding the lifting of the prohibition for public sector employees to establish trade union organizations, a draft law amending the Staff Regulations (section 15 of Legislative Decree No. 112 of 12 June 1959 on prohibited forms of work) and approved by the Minister of Labour was submitted to Parliament. In the meantime, public sector employees engaged in trade union activity, including the right to strike and the stoppage of work, without the Government taking any action against them; (3) the Lebanese Labour Code guarantees employers and workers the right to establish trade unions, including in the agricultural sector (which furthermore comprises 43 trade unions and six workers' groups) and domestic workers (for whom, however, no request to establish a trade union has been submitted), while contract workers in public administration enjoy the same treatment as public sector employees. Employees in all public bodies have the right to establish trade unions in the same way as the trade unions of employees of the Water Department or Electricité du Liban (EDL); (4) a draft law to amend the Labour Code, including sections 86, 87 and 89, is currently under consideration and the Committee's recommendation on the matter will be sent to the Tripartite Laws and Methods Review Commission for it to be studied and, if possible, implemented; (5) no union official has ever been dismissed by the Government pursuant to section 105 of the Labour Code, but the Committee's recommendation on this provision has been conveyed to the Tripartite Review Commission; and (6) with regard to trade union elections, the Ministry of Labour, as an external observer and on account in particular of the political and confessional divisions in Lebanon, is required to supervise union elections, without interfering in the electoral process, so as to ensure that all members have the right to vote in complete freedom and to prevent influential individuals from exerting pressure on trade union

members during the elections, the results of which can, if necessary, be contested before the Ministry of Labour or the competent judicial authorities.

48. The Government also indicates that Decree No. 2390 of 25 April 1992 (copy provided by the Government) defining and listing the most representative organizations of employers and workers deems the General Confederation of Lebanese Workers to be the most representative body of workers, since it brings together the majority of unions and trade union bodies.
49. The Government finishes by stating that, in the area of collective bargaining, under the presidency of the Minister of Labour, a commission made up of representatives of all three social partners was established to promote regular dialogue between the social partners. It also emphasizes that under the Code on Collective Labour Agreements, Mediation and Arbitration, which governs collective bargaining, the prior authorization of the Ministry of Labour is not required for collective labour agreements to enter into force. Section 5 of this Code stipulates, inter alia, that the collective labour agreement should be submitted in three original copies, one of which is sent to the Ministry of Labour for the official record. The Ministry of Labour publishes the agreement in the *Official Gazette* within one month of the date on which it was submitted, failing which, the collective labour agreement enters into force at the end of this one-month period.
50. *The Committee takes note of the information provided by the Government. As regards the ratification of Convention No. 87, the Committee requests the Government to keep it informed of progress in the ratification process and reminds it that, to harmonize the national legislation with the provisions of the Convention, it can avail itself of the technical assistance of the Office.*
51. *Noting the Government's indication that: (1) a draft law amending the Staff Regulations (section 15 of Legislative Decree No. 112 of 12 June 1959) prohibiting public sector employees from establishing and joining trade union organizations has been submitted to Parliament; (2) a draft law to amend the Labour Code, particularly sections 86, 87 and 89, which grant the Government the power to authorize or to refuse the establishment of a trade union and approve the internal rules of trade unions, is under consideration by the Tripartite Laws and Methods Review Commission, which has received the Committee's recommendations on these sections; and (3) the recommendations on section 105 of the Labour Code (which establishes that the Government has the right to dissolve any trade union committee that has failed to take account of the obligations imposed on it) have also been submitted to the Tripartite Review Commission. The Committee has high hopes that the legislative amendments to the Labour Code and the Staff Regulations shall be carried out in the near future to bring them into full conformity with the principles of freedom of association. The Committee requests the Government to send it a copy as soon as they are adopted.*
52. *The Committee further notes that, according to the Government, the Labour Code guarantees employers and workers, including agricultural and domestic workers, the right to establish trade unions, and that various workers' organizations in the agricultural sector have been registered in this way. Nevertheless, observing that domestic workers are still excluded from the scope of section 7 of the Labour Code, the Committee requests the Government to indicate the specific legislative regulations in force guaranteeing this category of workers their union rights, in particular that of establishing and joining organizations of their own choosing.*
53. *With respect to the allegations of the Government's interference in trade union elections, the Committee notes that the Government justifies its roles of supervising and observing the elections by the fact that the political and confessional divisions in Lebanon make it*

necessary to have an observer who is not part of the trade union to ensure that all members have the right to vote in complete freedom. In this regard, recalling that in cases of conflict it is crucial that the supervision of trade union elections should be entrusted to the competent judicial authorities or other independent persons, the Committee requests the Government to take the necessary measures to ensure that the competent authorities guarantee this external supervision during union elections which require it.

54. *With regard to the matter of the most representative trade union, the Committee observes that after reading Decree No. 2390 of 25 April 1992, supplied by the Government, the decree merely lists the most representative organizations without specifying objective criteria for defining these organizations. The Committee therefore has no alternative but to reiterate its previous recommendation and requests the Government to specify which objective pre-established criteria enable it to determine which is the most representative organization, and if no such criteria exist, to take the necessary measures to define them, in full consultation with the social partners concerned. The Committee recalls that the Government can also avail itself of the technical assistance of the Office in this regard.*
55. *Finally, the Committee welcomes the establishment under the presidency of the Ministry of Labour of a tripartite commission to promote regular dialogue between the social partners and notes with interest the Government's indication that, under section 5 of the code on collective labour agreements, the entry into force of a collective agreement does not require the Government's prior approval.*

Case No. 2850 (Malaysia)

56. The Committee last examined this case at its June 2013 meeting [see 368th Report, paras 52–54]. On that occasion, the Committee requested the Government to keep it informed of: the final outcome of the judicial proceedings before the Federal Court as regards the registration of a second in-house union at the Malayan Banking Berhad (Maybank); the judgments by the Industrial Court relating to complaints of harassment and intimidation of National Union of Bank Employees (NUBE) officials by the Bank's security guards and by the police and of anti-union dismissal of the NUBE Vice-President, Mr Abdul Jamil Jalaludeen, and Treasurer-General, Mr Chen Ka Fatt, on 31 January 2012.
57. In its communication dated 27 September 2013, the Malaysian Trade Union Congress (MTUC) submits additional information and new allegations relating to efforts allegedly made by the Bank to destroy the union by using its financial might to institute civil proceedings against NUBE leaders for the exercise of their freedom of expression rights. They recall that the Bank had promoted an in-house union contrary to Convention No. 98 and the existing collective agreement and transmit detailed information supplied by the NUBE refuting statements made in the Government's previous response.
58. In its communication dated 12 May 2015, the NUBE provides an update on the implementation of the Committee's recommendations and refer to lengthy delays in the legal system. In particular, they indicate that the cases brought in 2012 concerning two officials who had been assaulted while trying to access the enterprises are yet to be heard. They refer again to the suit against the NUBE for defamation, in which the NUBE won two out of the four pending cases. As regards the alleged anti-union dismissal cases, the NUBE indicates that these cases have yet to be heard by the courts since their dismissal in January 2012. They indicate that there are no available mechanisms for redress and remedy; no real conciliation meeting has been carried out and the Department for Industrial Relations Malaysia (DIRM) has not allowed the Human Rights Commission to respond to its complaint, indicating that the case cannot be discussed as it is before the courts. They conclude by requesting that a mission visit the country to address the issues raised in the complaint.

59. In a communication dated 14 February 2014, the Government indicates that it is not in a position to comment on the recent information submitted by the complainants as the matter is sub judice and the Bank has the right to take action before a court of law.
60. *The Committee notes the information provided by the Government and the information and most recent allegations of the complainant. As regards the NUBE's challenge of the registration of the Maybank Non-Executive Employees Union (MAYNEU), the Committee understands that this issue was resolved by the Appellate Court in September 2013, finding in favour of the NUBE. As regards the allegations of harassment and intimidation of NUBE officials by the Bank's security guards and by the police and the pending cases relating to the anti-union dismissals of the NUBE Vice-President, Mr Abdul Jamil Jalaludeen, and the Treasurer-General, Mr Chen Ka Fatt, the Committee, noting that more than three years have elapsed since the presentation of the complaint, must once again stress that justice delayed is justice denied [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 105]. It expresses the firm hope that all these proceedings will be concluded without further delay and requests the Government to provide copies of the relevant judgments. The Committee further requests the Government to respond in detail to the latest communication from the NUBE, including as regards its request for a mission to resolve the outstanding matters in this case.*

Case No. 2611 (Romania)

61. The Committee last examined this case, which concerns obstacles to collective bargaining in a public institution (the Court of Audit), at its October 2013 meeting [see 370th Report, approved by the Governing Body at its 319th Session, paras 93–95]. On that occasion, noting with regret that the Government had not provided any information on the developments in the negotiation of a collective labour agreement between senior officials of the Court of Audit and the trade unions active within it, or in the work of the committee that was established previously to monitor relations between the Court and the trade union organizations, the Committee had once again requested the Government to continue to inform it of any new developments in that regard.
62. In a communication dated 6 February 2014, the Government states that no dispute has been reported at the Court of Audit. Indeed, the trade unions of the Court of Audit and the senior officials of the Court of Audit, freely participating in a collective bargaining process, have agreed to the adoption of “special statuses” (the status of public auditors and the status of members of the Court of Audit) by means of which they established the rights, working conditions and terms of employment of staff/members of the Court, in accordance with national legislation. In addition, the parties are free to bargain collectively and to reach agreement on terms that are more favourable than those stipulated by labour legislation, and accordingly the staff of the Court of Audit have, as a result of their special status, terms of employment that are clearly superior to those of other categories of officials or budgetary staff. Moreover, neither the actions of the Romanian Government to encourage collective bargaining nor the recommendations of the Committee of Experts on the Application of Conventions and Recommendations can influence the outcome of this collective bargaining or the parties' willingness to engage in collective bargaining based on the existence of a mutual interest. The Government adds that collective bargaining takes place in full compliance with Act No. 62/2011 on national dialogue and that the terms are negotiated in accordance with the recommendations of the Committee of Experts.
63. *The Committee notes this information and, in particular, welcomes the indication that the trade unions and senior officials of the Court of Audit have agreed on the adoption of “special statuses” establishing the rights and working conditions of staff/members of the Court of Audit following a process of free collective bargaining between the parties, the*

terms of which were negotiated in accordance with the recommendations of the Committee of Experts.

Case No. 2758 (Russian Federation)

64. The Committee last examined this case, concerning allegations of numerous violations of trade union rights, including physical attacks on trade union leaders; violations of freedom of opinion and expression; Government interference in trade union matters; refusal by the state authorities to register trade unions; acts of anti-union discrimination and absence of effective mechanisms to ensure protection against such acts; denial of facilities for workers' representatives; violation of the right to bargain collectively; and the failure of the State to investigate those violations at its May–June 2013 meeting [see 368th Report, paras 124–130]. On that occasion, noting the Government's indication that the Russian Tripartite Commission (RTK) intended to discuss proposals for improving the legislation and enforcement procedures as a matter of priority, the Committee requested the Government to keep it informed of the outcome of these discussions. It once again further requested the Government to indicate whether the "Proposals for the resolution of the issues raised in the complaint" had been discussed by the RTK, pursuant to the October 2011 agreement between the Government and its social partners. As regards the issue of trade union leaflets included in the list of extremist material, for containing such slogans as "let those who caused the crisis pay for it", "fight substandard employment", and "we demand our night shift pay", the Committee once again urged the Government to take the necessary measures, without delay, in order to remove the trade union leaflets in question from the list of extremist literature and to ensure that this does not happen again.

65. By a communication dated 1 November 2013, the Government informs that the Committee's recommendations were examined by the Ministry of Labour on 11 January, 1 March and 17 April 2013 and further discussed by the RTK. On the basis of that discussion, on 31 July 2013, the parties agreed: (1) to propose to the Ministry of Labour to establish a working group involving the social partners to analyse the Committee's recommendations and finalize the proposals to improve the legislation and law enforcement producers; (2) to propose to the RTK to submit proposals on the improvement of the legislation and law enforcement producers to the Ministry of Labour; and (3) to consider it appropriate to take into account information on the results of the work of the abovementioned group at the RTK meetings.

66. The Government points out that the programme of cooperation between the Russian Federation and the ILO for 2013–16 includes such priorities as the promotion of international labour standards and strengthening of social dialogue. In this respect, the Supreme Court of the Russian Federation and the Office of the Prosecutor-General supported the idea of training on international labour standards, in particular those relating to freedom of association.

67. As regards the issue of trade union leaflets included in the list of extremist material, the Government reiterates that this occurred following a court decision, that the period for appeal of the court ruling has now expired, and that there are therefore no grounds to exclude the leaflets from the list of extremist material.

68. By a communication dated 9 April 2015, the Confederation Labour of Russia (KTR), complainant in this case, indicates that in addition to measures described by the Government as reflected above, no other concrete measures have been taken to implement the Committee's recommendations and that the examination of this question by the RTK has been postponed on several occasions and is currently scheduled for June 2015. With regard to the trade union leaflets, the KTR indicates that no measures have been taken by the Government in order to remove the trade union leaflets in question from the list of

extremist literature, despite the fact that both the Prosecutor-General and the President of the Supreme Court have the power, under the legislation in force, to reopen the case.

- 69.** *The Committee notes the information provided by the Government and the complainant. In general, the Committee deeply regrets that its 2012 recommendations appear to be still at the stage of examination and development of proposals; this is despite the concrete proposals for addressing the issues raised in the complaint made by the two major trade union centres in the country and supported by the Government and the employers' organization during the visit of an ILO technical mission to the country in October 2011. It further deeply regrets that, despite its persistent requests, the Government took no measure to ensure that the trade union leaflets in question are removed from the federal list of extremist literature. The Committee expects that the Government will give effect to the Committee's recommendations set out above without further delay. Welcoming the interest expressed by the Government in training on international labour standards for judges and prosecutors, the Committee trusts that the necessary steps to that end will be taken by the Government in collaboration with the Office.*

* * *

- 70.** Finally, the Committee requests the governments concerned to keep it informed of any developments relating to the following cases.

Case	Last examination on the merits	Last follow-up examination
1787 (Colombia)	March 2010	June 2014
1962 (Colombia)	November 2002	June 2008
2068 (Paraguay)	November 2005	June 2009
2173 (Canada)	March 2003	June 2010
2291 (Poland)	March 2004	March 2015
2430 (Canada)	November 2006	March 2015
2434 (Colombia)	March 2009	–
2460 (United States)	March 2007	November 2014
2478 (Mexico)	March 2010	November 2014
2547 (United States)	June 2008	November 2014
2602 (Republic of Korea)	March 2012	March 2015
2603 (Argentina)	November 2008	November 2012
2654 (Canada)	March 2010	March 2014
2679 (Mexico)	June 2010	March 2015
2694 (Mexico)	October 2013	November 2014
2700 (Guatemala)	March 2010	March 2011
2715 (Democratic Republic of the Congo)	June 2014	–
2741 (United States)	November 2011	November 2014
2755 (Ecuador)	June 2010	March 2011
2797 (Democratic Republic of the Congo)	March 2014	–
2808 (Cameroon)	November 2012	March 2015
2820 (Greece)	November 2012	–
2872 (Guatemala)	November 2011	–
2916 (Nicaragua)	June 2013	–

Case	Last examination on the merits	Last follow-up examination
2917 (Bolivarian Republic of Venezuela)	November 2014	–
2919 (Mexico)	June 2013	November 2014
2934 (Peru)	November 2012	–
2937 (Paraguay)	March 2015	–
2941 (Peru)	March 2015	–
2944 (Algeria)	March 2015	–
2946 (Colombia)	March 2015	–
2947 (Spain)	March 2015	–
2954 (Colombia)	June 2014	–
2960 (Colombia)	March 2015	–
2964 (Pakistan)	June 2013	–
2973 (Mexico)	October 2013	–
2980 (El Salvador)	June 2013	–
2998 (Peru)	March 2015	–
3015 (Canada)	March 2015	–
3022 (Thailand)	June 2014	–
3024 (Morocco)	March 2015	–
3026 (Peru)	March 2015	–
3030 (Mali)	March 2015	–
3033 (Peru)	March 2015	–
3041 (Cameroon)	November 2014	–
3043 (Peru)	March 2015	–
3050 (Indonesia)	March 2015	–
3052 (Mauritius)	March 2015	–
3056 (Peru)	March 2015	–
3057 (Canada)	March 2015	–
3073 (Lithuania)	March 2015	–
3084 (Turkey)	March 2015	–

- 71.** The Committee hopes these governments will quickly provide the information requested.
- 72.** In addition, the Committee has received information concerning the follow-up of Cases Nos 1865 (Republic of Korea), 2086 (Paraguay), 2096 (Pakistan), 2153 (Algeria), 2304 (Japan), 2341 (Guatemala), 2400 (Peru), 2434 (Colombia), 2488 (Philippines), 2512 (India), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2583 (Colombia), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2667 (Peru), 2678 (Georgia), 2699 (Uruguay), 2706 (Panama), 2708 (Guatemala), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2725 (Argentina), 2745 (Philippines), 2746 (Costa Rica), 2750 (France), 2751 (Panama), 2752 (Montenegro), 2763 (Bolivarian Republic of Venezuela), 2765 (Bangladesh), 2768 (Guatemala), 2780 (Ireland), 2788 (Argentina), 2789 (Turkey), 2793 (Colombia), 2807 (Islamic Republic of Iran), 2815 (Philippines), 2816 (Peru), 2827 (Bolivarian Republic of Venezuela), 2833 (Peru), 2837 (Argentina), 2840 (Guatemala), 2844 (Japan), 2852 (Colombia), 2854 (Peru), 2856 (Peru), 2860 (Sri Lanka), 2883 (Peru), 2892 (Turkey), 2895 (Colombia), 2900 (Peru), 2907 (Lithuania), 2915 (Peru), 2929 (Costa Rica), 2947 (Spain), 2953 (Italy), 2966 (Peru), 2976 (Turkey), 2977 (Jordan), 2979 (Argentina),

2981 (Mexico), 2985 (El Salvador), 2988 (Qatar), 2991 (India), 2992 (Costa Rica), 2999 (Peru), 3006 (Bolivarian Republic of Venezuela), 3011 (Turkey), 3013 (El Salvador), 3021 (Turkey), 3033 (Peru), 3036 (Bolivarian Republic of Venezuela), 3037 (Philippines), 3039 (Denmark), 3058 (Djibouti) and 3077 (Honduras), which it will examine at its next meeting.

CASE NO. 3085

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

**Complaint against the Government of Algeria
presented by
the National Union of Education Workers (SNTE)**

*Allegations: The complainant organization
denounces the interference by the authorities in
its activities, in particular in the process of the
election of its leaders*

73. The complaint is contained in a series of communications from the National Union of Education Workers (SNTE) dated 15 July and 24 August 2014 and 10 February and 24 March 2015.
74. The Government sent its observations in a communication dated 11 December 2014.
75. Algeria has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

76. In a communication dated 15 July 2014, the SNTE explains that it is a legally recognized organization which is currently having to deal with the recognition by the human resources office of the Algerian Ministry of Education of the management emerging from an unlawful congress held on 25 June 2003; the self-appointed president of the organization, Mr Abdelkrim El Moudjahed Boudjenah, was supported by the Ministry of Labour and Social Affairs, which validated the 2003 congress in Communication No. 271/MTSS/DRP/2003.
77. Faced with this situation, the SNTE indicates that it has filed a number of lawsuits and requested clarifications from the Ministry of Labour and Social Affairs concerning its 2003 letter to the human resources office of the Algerian Ministry of Education. The Ministry responded that the letter in question was for information purposes, and maintained that the administration does not interfere in the internal affairs of trade unions, in accordance with Act No. 90-14 on the procedures for the exercise of trade union rights. After applying to the administrative courts, the president of the SNTE considered to be lawful (hereinafter referred to as the "lawful SNTE") was notified of a decision by the Administrative Chamber of Algiers dated 15 November 2005 that it is the State Council which has the authority to rule on administrative decisions of the Ministry of Labour.

78. The SNTE indicates that it held its own congress on 20 July 2004. That congress, however, was deemed illegal by the Ministry of Labour, which instead recognized the congress organized by Mr Boudjenah in August 2004, which was broadly supported and endorsed by the authorities. These facts clearly show the Government's interference in the activities of a free and independent trade union.
79. The complainant organization summarizes the legal proceedings initiated in this case as follows: following the lodging of a complaint against Mr Boudjenah by the lawful SNTE in December 2007, the meeting of 25 June 2003 was deemed invalid in a ruling of 17 March 2008, thereby rendering all subsequent decisions by both its congress and by the elected president null and void. However, following an appeal filed by the respondent, the Algiers Court of Appeal issued a decision overturning the judgment of the court of first instance (7 December 2008). The SNTE brought the case to the Supreme Court, which issued a ruling (19 January 2010) quashing the contested decision and returning the case for reconsideration to the Algiers Court of Appeal, but with a different bench. The Algiers Court of Appeal issued a final ruling on 17 June 2013 upholding the ruling of the court of first instance which had invalidated the congress of 25 June 2003. The complainant organization indicates that, on 3 July 2013, after the withdrawal of the executory order (the original document) of the judicial decision, Mr Boudjenah was informed of the final ruling by a bailiff. Mr Boudjenah, however, refused the notification. The document was subsequently sent to him by registered mail on 16 July 2013 and made public through its posting on 14 August 2013 at the Hussein Dey Court in Algiers, which is the locally competent court (all the judicial decisions and correspondence mentioned by the complainant organization are attached to the complaint).
80. According to the complainant organization, in September 2013, Mr Boudjenah attempted to apply for clarification of the reasons for invalidating the 2003 congress before both the Social Court and the Algiers Court of Appeal. However, the two requests were rejected in November 2013. His appeal of the social court's decision was rejected on 16 February 2014 (all the decisions are attached to the complaint).
81. The complainant organization indicates that, on account of the latest court decisions, an election meeting was held on 25 and 26 April 2014, attended by a bailiff duly mandated by the presiding judge of the local competent court in the city of Oran, at which Ms Aicha Bennoui was elected president of the SNTE, putting an end to the lengthy legal process described above. Recalling that the court decisions referred to are final and enforceable, the complainant organization denounces the fact that the Ministry of Labour continues, nevertheless, to impede its activities.
82. The complainant organization also refers to the many prosecutions and convictions which Mr Boudjenah currently faces, including most recently a case brought against him for breach of confidence and fraud before the court of Algiers by a group of 40 teachers; the complainant organization is surprised that Mr Boudjenah has still not been suspended, as prescribed in the public service regulations for civil servants who have been subject of criminal prosecution which prevents them from continuing their work (article 174 of Act No. 06/03).
83. In its communication dated 24 August 2014, the complainant organization submitted two contradictory letters by the country's Ministry of Education to local education offices (school inspectorates) concerning the matter. The aim of the first letter dated 8 October 2013 is to order Mr Boudjenah's trade union activity to be discontinued. The complainant organization expresses surprise, however, that, in a second letter dated 8 April 2014, the Ministry recognizes Mr Boudjenah as the president of the SNTE, even though no new element had been introduced to the case that would justify such a turnaround.

84. In its communication dated 10 February 2015, the SNTE denounced the authorities' reprisals against it for having brought the case to the International Labour Office. The SNTE deplores the fact that it was informed orally of the Ministry of Labour's decision to cease all contact with it from the moment that it brought the matter before the Committee on Freedom of Association.
85. Lastly, in a communication dated 24 March 2015, the SNTE forwarded a press article reporting the holding of a congress organized by Mr Boudjenah and attended by representatives of the country's Ministry of Labour and Social Affairs and Ministry of Education. The complainant organization deplores this situation; the Supreme Court ruling prevents him from exercising any rights in respect of the SNTE.

B. The Government's reply

86. In a communication dated 11 December 2014, the Government indicates that the SNTE was registered on 15 April 2000 under Act No. 90-14 of 2 June 1990 on the procedures for the exercise of trade union rights. It is active in the country's education sector, along with other trade unions. When it was registered, the president of the SNTE was Mr Rachid Dridi. However, one year after its registration, Mr Dridi resigned, triggering the start of the conflict within the trade union.
87. The Government alleges that in 2003, a number of members of the SNTE national council gave notification of their loss of trust in Mr Mohamed Bennoui, then president of the SNTE national office following the resignation of Mr Dridi. These council members then set up a committee to arrange an extraordinary congress of the trade union. Accordingly, in June 2003, the members of this committee organized the extraordinary congress, following which a national bureau was elected, with Mr Boudjenah as president. The other party to the dispute organized a trade union congress in July 2004, at which a governing body was elected, with Mr Bennoui as president.
88. The Government indicates that, in keeping with the principle of non-interference in the internal affairs of trade unions, it informed the two parties to the dispute that the situation now depends on the prerogatives of the competent jurisdictions. Furthermore, the aggrieved party exercised its right and brought the disputes before the courts. On 17 March 2008, the Sidi M'hamed Court (Algiers) accordingly handed down a judgment invalidating the extraordinary congress of June 2003 and all its legal consequences. The Algiers Court of Appeal overturned the judgment of the lower court in a ruling handed down on 7 December 2008. Lastly, on 4 October 2012, the Supreme Court ordered that the case be taken up again and reconsidered in the same law court but with a different bench. In a ruling on 17 June 2013, the Algiers Court of Appeal upheld the judgment handed down in 2008 by the Sidi M'hamed Court.
89. The Government explains that the case concerns judicial rulings handed down in the case concerning the extraordinary congress of 2003. The Government affirms that, since the June 2003 congress, Mr Boudjenah has organized two ordinary congresses in 2004 and 2009, at both of which he was re-elected union president. To ascertain whether the congresses of 2004 and 2009 had been invalidated by the final ruling of the Algiers Court of Appeal, Mr Boudjenah submitted two requests for interpretation: one on the local court's ruling of 17 March 2008 and the other on the appeal court's ruling of 17 June 2013. According to the Government, it transpires from the interpretative decision and ruling on the two requests that the two courts had examined the case with reference solely to the extraordinary congress of June 2003, and the 2004 and 2009 congresses had not been examined by either the local or the appeal court. The Government considers that, in the absence of a judicial decision invalidating the 2004 and 2009 congresses, the congress remains the trade union's supreme body for the election of its representatives.

90. The Government further states that the party which had initiated the judicial proceedings has now been divided, each of the two new parties in dispute claiming to represent the trade union. The Government attaches copies of correspondence in which each party claims the exclusion of the other.
91. With regard to the facts set out in the complaint concerning Mr Boudjenah, the Government explains that the matters fall under ordinary law and that it is the responsibility of the courts to issue a decision.
92. In conclusion, the Government expresses its willingness to notify the Committee on Freedom of Association of any developments regarding the facts reported in the complaint, on the one hand, and, on the other, of the handling of the internal union dispute, and also of the potential measures which will be taken in accordance with article 174 of the general public service regulations.

C. The Committee's conclusions

93. *The Committee notes that, in this case, the complainant organization alleges interference by the authorities in an internal union dispute.*
94. *According to the information provided by the SNTE and the Government, the Committee observes that the dispute described may be summarized as follows: the SNTE has been legally recognized since 2000 and is active in the country's education sector, along with other trade unions. One year after its registration, the president of the SNTE, Mr Dridi, resigned. In 2003, his successor, Mr Bennoui, faced a revolt by several members of the union's national council. These members set up a committee to arrange an extraordinary congress of the trade union, which met in June 2003, following which, a national bureau was elected, with Mr Boudjenah as president. Mr Bennoui's faction contested the legality of the extraordinary congress of June 2003 and organized its own congress in July 2004, which elected a governing body with Mr Bennoui as president. Mr Bennoui's faction accuses the authorities, in particular the Ministry of Labour and Social Affairs and the Ministry of Education, of interference on account of their overt support for Mr Boudjenah's faction, and their recognition not only of the results of the June 2003 extraordinary congress, but also of the ordinary congress which Mr Boudjenah organized in August 2004, at which he was re-elected president.*
95. *The Committee notes that Mr Bennoui's faction, which declares itself as the lawful SNTE, then took the matter to the courts. After filing a complaint against Mr Boudjenah in December 2007, the congress of 25 June 2003 was deemed invalid by a first instance ruling of 17 March 2008, thereby rendering all decisions taken during the congress and, subsequently, by the elected president null and void. When, however, the other faction appealed against the ruling, the Algiers Court of Appeal handed down a decision setting aside the first instance ruling (7 December 2008). The case was taken up by the Supreme Court, which finally, on 19 January 2010, ruled to quash the contested decision and return the case for reconsideration to the Algiers Court of Appeal but with a different bench. Lastly, in a final ruling of 17 June 2013, the Algiers Court of Appeal upheld the first instance ruling invalidating the congress of 25 June 2003.*
96. *The Committee recalls, first, that internal disputes in a trade union organization do not come within its competence and should be resolved by the persons concerned (for example, by a vote), by appointing an independent mediator with the agreement of the parties concerned, or by intervention of the judicial authorities. In addition, in cases of internal dissension within one and the same trade union federation, by virtue of Article 3 of Convention No. 87, the only obligation of the government is to refrain from any interference which would restrict the right of the workers' and employers' organizations to*

*draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes, and to refrain from any interference which would impede the lawful exercise of that right [See **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 1122 and 1117]. The Committee notes that, in the present case, the conflict within the SNTE has been settled by the courts, which ruled that the disputed extraordinary congress of June 2003 was invalid, rendering its legal consequences null and void. The Committee further notes that the complainant organization indicates that, in view of the most recent judicial decision, an election meeting was held on 25 and 26 April 2014, in the presence of a court bailiff specially authorized by the presiding judge of the locally competent court – the court of Oran – at which Ms Aicha Bennoui was elected president of the SNTE.*

- 97.** *In this regard, the Committee observes that the Government mentions two congresses organized by Mr Boudjenah, in 2004 and 2009, at both of which he was re-elected president, and points out that, for lack of a judicial ruling invalidating the 2004 and 2009 congresses, it considers that the congress remains the trade union's supreme body for the election of its representatives. Recalling that, by its ruling of 17 June 2013, the Court of Algiers had invalidated the congress of 25 June 2003, thus rendering its legal consequences null and void, in particular the election of Mr Boudjenah as president and the subsequent decisions which he had taken in that position, the Committee queries the Government's position on the matter. Given that the internal conflict has been definitively settled by the courts, the Committee requests the Government to accept all the consequences of this, in compliance with the principles of non-interference by the authorities and with the right of professional organizations freely to elect their representatives.*
- 98.** *The Committee expects that, following the judicial decisions, the issue of SNTE representation must henceforth be clearly acknowledged by the Ministry of Education, particularly in its correspondence with the local education offices. The Committee requests the Government to report any developments regarding the events reported in the complaint, in line with its stated intention, in particular with regard to the representation of the SNTE and its involvement in social dialogue in the education sector.*
- 99.** *The Committee observes that, according to the allegations, almost a year after the April 2014 election meeting held in the presence of a bailiff duly mandated by the presiding judge following a court decision which finally settled the question of the SNTE representation, the complainant organization denounced the holding of a congress in March 2015 by the opposing faction in the presence of representatives of the Ministry of Labour and Social Affairs and the Ministry of Education. The Committee requests the Government to provide detailed information in this regard.*
- 100.** *Lastly, the Committee notes with concern the indication by the complainant organization that it had supposedly been subject to reprisals by the authorities. The SNTE deplores the fact that it had been informed orally of the Ministry of Labour's decision to break off all engagements with it from the moment that the former brought the matter before the Committee. In this regard, the Committee considers that professional organizations of workers and employers should under no circumstances be subjected to retaliatory measures for having exercised their rights arising from ILO instruments on freedom of association, and especially for having lodged a complaint before the Committee on Freedom of Association. The Committee moreover considers that suspending collaboration with a trade union organization is not likely to ensure peaceful industrial relations. If this allegation is confirmed, the Committee considers that it constitutes a serious violation of freedom of association and firmly expects the Government to immediately cease all reprisals against the SNTE.*

The Committee's recommendations

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

- (a) The Committee considers that the internal conflict within the SNTE has been definitively settled by the courts and requests the Government to accept all the consequences of this, in compliance with the principles of non-interference by the authorities and with the right of professional organizations freely to elect their representatives.*
- (b) The Committee expects that, following the judicial decisions, the issue of SNTE representation must henceforth be clearly acknowledged by the Ministry of Education, and requests the Government to communicate any developments regarding the events reported in the complaint, in line with its stated intention, especially as regards the representation of the SNTE and its involvement in social dialogue in the education sector.*
- (c) The Committee requests the Government to provide detailed information in reply to the allegations that, almost a year after the April 2014 election meeting held in the presence of a bailiff duly mandated by the presiding judge following a court decision which finally settled the question of the SNTE representation, a congress was organized in March 2015 by the opposing faction in the presence of representatives of the Ministry of Labour and Social Affairs and the Ministry of Education.*
- (d) If this allegation is confirmed, the Committee firmly expects the Government to immediately cease all reprisals against the SNTE on the basis that a complaint was filed with the Committee.*

CASE NO. 3070

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

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

- **the Workers’ Trade Union Confederation of Benin (CSTB)**
- **the Confederation of Autonomous Trade Unions of Benin (CSA-Bénin)**
- **the General Confederation of Workers of Benin (CGTB)**
- **the Confederation of Independent Trade Union Organizations of Benin (COSI-Bénin)**
- **the Confederation of Private and Informal Sector Trade Unions of Benin (CSPIB) and**
- **the Federation of Trade Unions of Financial Workers (FESYNTRA-Finances)**

Allegations: The complainants denounce the violent repression by the state law enforcement authorities of a peaceful march organized by, among others, the main national trade union confederations

- 102.** The complaint is contained in a communication from the Workers’ Trade Union Confederation of Benin (CSTB), the Confederation of Autonomous Trade Unions of Benin (CSA-Bénin), the General Confederation of Workers of Benin (CGTB), the Confederation of Independent Trade Union Organizations of Benin (COSI-Bénin), the Confederation of Private and Informal Sector Trade Unions of Benin (CSPIB) and the Federation of Trade Unions of Financial Workers (FESYNTRA-Finances) dated 25 February 2014.
- 103.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case twice. At its March 2015 meeting [see 374th Report, para. 5], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, which was approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any information.
- 104.** Benin 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 complainants’ allegations

- 105.** In a communication dated 25 February 2014, the CSTB, the CSA-Bénin, the CGTB, the COSI-Bénin, the CSPIB, and the FESYNTRA-Finances stated that they organized a peaceful march on 27 December 2013 to protest against the imprisonments and growing insecurity in the country and against the validation of the results of the competitive examination in the public administration for the Finance Ministry, which the complainants considered to be fraudulent.
- 106.** According to the complainants, all the administrative formalities for the organization of the march had been fulfilled. A written statement was sent to Cotonou City Council, which did

not object to the march, and the central police station was then informed for the purposes of overseeing the marchers. However, to everyone's surprise, the peaceful march was violently suppressed by the law enforcement authorities. More than 20 people were left seriously injured as a result of the brutality. Among them were general secretaries of confederations, who had to be taken to Cotonou Hospital for first-line emergency treatment.

107. The complainants recall that they already submitted a complaint to the Committee on Freedom of Association in 2012 as a result of police violence against striking teachers. They condemn the fact that acts of violence by the law enforcement authorities against trade union activities are now commonplace, and provide as examples the army's occupation of the labour exchange in October 2013, thereby preventing the general secretaries of the confederations from accessing it, and the dispersal of a peaceful march organized jointly by the Patriotic Alliance, left wing forces, civil society and the trade union confederations to protest against an attempt to revise the national constitution.
108. The complainants denounce the fact that these serious acts of violence by the authorities not only contravene articles 9 and 25 of the national constitution, but they are also inconsistent with the principles of freedom of association under Convention No. 87, which Benin has ratified.

B. The Committee's conclusions

109. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's serious allegations, even though it has been requested several times to present its comments and observations in this case, including through an urgent appeal. The Committee urges the Government to cooperate with the procedures in the future.*
110. *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, which was approved by the Governing Body], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
111. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, para. 31].*
112. *The Committee notes that the complainants' allegations concern the violent repression by the law enforcement authorities of a peaceful march organized by the country's main trade union confederations in December 2013 that had been authorized by all of the competent authorities. The Committee notes that the complainants attached to their complaint photographs taken during the peaceful march, some of which show seriously injured individuals being evacuated.*
113. *In this respect, the Committee must express its deep concern at the alleged acts of violence that violated the safety and physical integrity of trade unionists conducting a peaceful demonstration. In the absence of information from the Government, the Committee considers that the purposes of the peaceful demonstration included the defence of occupational interests and considers it useful to remind the Government that freedom of association can only be exercised in conditions in which fundamental human rights, and in*

particular those relating to human life and personal safety, are fully respected and guaranteed. In the particular case of meetings and public demonstrations, the Committee recalls that it considers that workers should enjoy the right to peaceful demonstration to defend their occupational interests. [See **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 43 and 133].

- 114.** *Given the lack of response from the Government in the present case, and mindful of the fact that it recently issued recommendations to the Government of Benin on a case concerning police brutality against teacher trade unionists on strike [see 367th Report, Case No. 2938, paras 213–231], the Committee strongly urges the Government immediately to take the necessary measures to conduct an investigation into the alleged acts of violence, and to take all the appropriate steps and issue the relevant instructions to the law enforcement authorities to ensure that in the future the workers’ right to demonstrate peacefully to defend their occupational interests may be exercised in accordance with the aforementioned principles of freedom of association. The Committee requests the Government to keep it informed in this regard.*

The Committee’s recommendations

- 115.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant’s allegations, even though it has been requested several times to present its comments and observations on this case, including through an urgent appeal. The Committee urges the Government to cooperate with the procedures in the future.*
 - (b) The Committee strongly urges the Government immediately to take the necessary measures to conduct an investigation into the alleged acts of violence, and to take all the appropriate steps and issue the relevant instructions to the law enforcement authorities to ensure that in the future the workers’ right to demonstrate peacefully to defend their occupational interests may be exercised in accordance with the principles of freedom of association. The Committee requests the Government to keep it informed in this regard.*

CASE NO. 3063

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

**Complaint against the Government of Colombia
presented by
the Trade Union of Energy Workers of Colombia
(SINTRAELECOL)**

Allegations: The complainant organization reports violations of the right to bargain collectively by the enterprises Termotasajero SA, the Pacific Power Company, the Tulua Power Company, the Caldas Hydroelectric Power Company and the Quindío Power Company

- 116.** The complaint is contained in a communication dated 4 March 2014, submitted by the Trade Union of Energy Workers of Colombia (SINTRAELECOL).
- 117.** The Government sent its observations in communications of 8 July 2014 and 9 March 2015.
- 118.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 119.** In a communication dated 4 March 2014, the complainant reports that Colombia's judiciary has an anti-union attitude, as seen from a Supreme Court *tutela* (protection of constitutional rights) judgment denying Termotasajero SA workers the right to the wage increases provided for under the collective agreement for 2003, 2004, 2005, 2006 and 2007, which had been upheld by the High Court of Cúcuta. The complainant also reports that the Ministry of Labour authorized the dismissal of 16 workers from the same enterprise for alleged economic reasons.
- 120.** The complainant also alleges that the Caldas Hydroelectric Power Company and the Quindío Power Company refuse to enter into collective bargaining. In that connection, the complainant describes the situation in the Caldas Hydroelectric Power Company: (i) the bargaining process has been impeded for more than two years; (ii) near the end of the extended direct settlement stage, the enterprise withdrew all of the proposals that it had made and agreements that it had reached during the bargaining; (iii) owing to the slowness with which the Arbitral Tribunal was constituted, the trade union was obliged to withdraw and resubmit its list of demands; and (iv) the enterprise attempted to begin the new stage of the bargaining in the absence of the trade union organization.
- 121.** The complainant also alleges that the Pacific Power Company and the Tulua Power Company systematically refuse to enter into collective bargaining and that, as a result, the lists of demands never lead to agreements; the constitution of an arbitral tribunal must be requested on each occasion and these tribunals take too long to issue their awards. The complainant adds that the Pacific Power Company, dissatisfied with the provisions of the

most recent arbitral award, used its economic power in an attempt to prevent the award from being promulgated.

B. The Government's reply

- 122.** In a communication of 8 July 2014, the Government transmitted the replies of the various enterprises mentioned in the allegations. Termotasajero SA states that: (i) the Supreme Court judgment reported by the complainant is fully consistent with the constitutional and legal provisions in force in Colombia; (ii) the provision of the collective agreement (for the period from 1 March 2000 to 28 February 2002) on the basis of which a wage increase was requested for 2003, 2004, 2005, 2006 and 2007 refers expressly and solely to wage increases for 2000 and 2001; (iii) therefore, the extension of the period of application of the agreement as a consequence of the failure to sign a new one does not cover the provision in question, which applied to a specific and clearly established time period; (iv) for this reason, the courts, in both ordinary and *tutela* proceedings, have ruled against the trade union organization in the past; and (v) the Supreme Court's judgment is still pending as part of the normal procedure.
- 123.** The Pacific Power Company states that, under Colombian law, the enterprise has both a collective agreement (*convención colectiva*), signed with unionized workers, and a collective accord (*pacto colectivo*). With regard to collective bargaining on the basis of a single list of demands submitted to the Pacific Power Company and the Tulua Power Company by the trade union organization, the enterprise states that: (i) despite the various proposals submitted by the enterprise, no agreement was reached during any of the direct settlement stages, which officially ended on 19 December 2011 with the transmission of a closing document to the Ministry of Labour; (ii) on 2 April 2012, the trade union organization requested the constitution of an Arbitral Tribunal, which was seated on 2 May 2013 and resolved the dispute through an arbitral award on 29 May 2013; (iii) the enterprise was compelled to bring an annulment appeal against the award, which it considered unlawful; and (iv) the annulment appeal is pending before the Labour Chamber of the Supreme Court.
- 124.** The Tulua Power Company also mentions collective bargaining on the basis of a single list of demands (mentioned in the previous paragraph), in which the direct settlement stage officially ended on 19 December 2011, when the closing document was sent to the Ministry of Labour. It adds that the Arbitral Tribunal was seated on 24 June 2013 and resolved the dispute through an award issued on 24 June 2013, which was confirmed and implemented.
- 125.** The Quindío Power Company states that it is unfair to claim that there was an unwillingness to bargain since it was the union itself that, by refusing to denounce the current agreement, triggered its automatic renewal. For its part, the Caldas Hydroelectric Power Company states that recourse to arbitral tribunals was necessary because the union made excessive demands at the bargaining table and took a maximalist position by refusing to sign agreements unless all of its demands were met. The enterprise adds that the facts as submitted show that it has fully complied with the rules governing collective bargaining and that this has been confirmed by the courts, which have ruled against the trade union in all the *tutela* proceedings that the latter has brought before them.
- 126.** The Government then adds its observations, stating that: (i) the complainant requested a labour administration investigation of the Tulua Power Company and the Pacific Power Company for refusal to bargain collectively and violation of a collective agreement; (ii) the Ministry of Labour declined to order such an investigation because, in its view, the issue was a conflict of interpretation between legal regulations, which fell within the competence of the courts; (iii) the fact that the former Ministry of Health and Social Welfare authorized

the dismissal of 16 workers from Termotasajero SA for economic reasons has nothing to do with freedom of association; (iv) the court's ruling on the annulment appeal against the arbitral award concerning the bargaining between the complainant and the Pacific Power Company is pending; and (v) within the framework of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), an agreement to pursue discussion of the list of demands was signed on 4 June 2014, by the representatives of the complainant and the Caldas Hydroelectric Power Company; furthermore, an agreement between the complainant and the Quindío Power Company, in which it was decided to remove the debate from the courts and begin the direct settlement stage, was also signed.

127. In a communication dated 9 March 2015, the Government stated that in January 2015, on the basis of the first agreement that the complainant and the Caldas Hydroelectric Power Company had signed within the framework of the CETCOIT in June 2014, the parties had signed a collective labour agreement that would remain in force until 2017. In the light of the signing of this agreement, the complainant withdrew the 27 labour administration complaints that it had lodged against the enterprise.

C. The Committee's conclusions

128. *The Committee observes that, in the present case, the complainant alleges that Colombia's judiciary has an anti-union attitude, as seen from a Supreme Court judgment, and also that the right to bargain collectively is being violated by four enterprises in the electricity sector. The Committee also observes that both the enterprises in question and the Government emphasize that there has been full compliance with the relevant constitutional and legal provisions, that various enterprises stress that it is difficult to negotiate with the complainant owing to its alleged maximalist position and that, according to the Government, a collective agreement between the complainant and one of the enterprises mentioned in the complaint has recently been signed.*
129. *With respect to the complainant's allegation that the judiciary has an anti-union attitude, as seen from the dispute between SINTRAELECOL and Termotasajero SA, the Committee observes that the dispute revolves around the interpretation of the provision of a collective agreement concerning wage increases in 2000 and 2001, namely, whether this provision must remain applicable to subsequent years during which, in the absence of a new agreement, the collective agreement was extended. Under the circumstances, the Committee will not pursue its examination of this aspect of the complaint.*
130. *With regard to the report that the then Ministry of Health and Social Welfare authorized the dismissal of 16 workers from the same enterprise for alleged economic reasons, the Committee observes that the allegations are unrelated to any alleged violation of the principles of freedom of association and collective bargaining. Under the circumstances, the Committee will not pursue its examination of this allegation.*
131. *Concerning the alleged violation of the right to bargain collectively by the Caldas Hydroelectric Power Company, the Committee notes with satisfaction that: (i) in January 2015, on the basis of the agreement that the complainant and the enterprise signed within the framework of the CETCOIT in June 2014, the parties signed a collective agreement that will remain in force until 2017. In the light of the signing of this agreement, the complainant withdrew the 27 labour administration complaints that it had lodged against the enterprise.*
132. *With respect to the alleged violation of the right to bargain collectively by the Quindío Power Company, the Committee observes that both the complainant and the enterprise have complained that the other party was unwilling to engage in dialogue or conclude agreements. The Committee also notes with interest the Government's statement that, in*

June 2014, the complainant and the enterprise signed an agreement in which they decided to remove the debate from the courts and begin the direct settlement stage. Recalling that it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement and that genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 935], the Committee encourages the parties to deepen their efforts to establish relations built on dialogue and mutual respect and requests the Government to keep it informed of the results of the negotiations.

- 133.** Concerning the alleged violation of the right to bargain collectively by the Tulua Power Company, the Committee notes that, as the parties had been unable to reach an agreement, an Arbitral Tribunal was constituted and issued an award, which was being implemented. Under the circumstances, the Committee will not pursue its examination of this allegation.
- 134.** With regard to the alleged violation of the right to bargain collectively by the Pacific Power Company, the Committee observes that both the complainant and the enterprise have complained that the other party was unwilling to engage in dialogue or conclude agreements. The Committee also notes that, when no agreement had been reached, an Arbitral Tribunal was constituted and that the award led the enterprise to bring an annulment appeal, which is pending before the Labour Chamber of the Supreme Court. In this connection, the Committee recalls that both employers and trade unions should negotiate in good faith and make every effort to come to an agreement, and that satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence [see **Digest**, op. cit., para. 936]. Moreover, since systematic recourse to the courts during collective labour relations does not foster the development of a climate of trust between the parties, the Committee urges the complainant and the enterprise to consider the use of domestic conciliation mechanisms in order to resume the dialogue. The Committee requests the Government to keep it informed of developments in the situation and of the outcome of the appeal for annulment of the arbitral award.

The Committee's recommendations

- 135.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
 - (a)** *With regard to the allegation of violation of the right to bargain collectively by the Quindío Power Company, the Committee encourages the complainant and the enterprise to deepen their efforts, begun in 2014, to establish relations built on dialogue and mutual respect and requests the Government to keep it informed of the results of the negotiations.*
 - (b)** *With regard to the allegation of violation of the right to bargain collectively by the Pacific Power Company, the Committee invites the complainant and the enterprise to consider the use of domestic conciliation mechanisms in order to resume the dialogue.*
 - (c)** *The Committee requests the Government to keep it informed of developments in the situation and of the outcome of the appeal for annulment of the arbitral award.*

CASE NO. 3080

DEFINITIVE REPORT

**Complaint against the Government of Costa Rica
presented by
the Union of Employees of the University
of Costa Rica (SINDEU)**

***Allegations: Dismissal of three union leaders by
the University of Costa Rica in violation of the
collective agreement***

- 136.** The complaint is contained in a communication from the Union of Employees of the University of Costa Rica (SINDEU) dated 18 June 2014. The union submitted additional information in a communication dated 22 August 2014.
- 137.** The Government sent further observations in a communication dated 28 January 2015.
- 138.** Costa Rica 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

- 139.** In its communication dated 18 June 2014, SINDEU alleges that the University of Costa Rica (UCR), a public university, signed an agreement with the Costa Rican Social Security Fund (CCSS) in 2002, which was renewed on various occasions between January 2003 and 14 February 2014 and covered the administration of the basic integrated health-care teams (EBAIS), which had as beneficiaries various communities across the country, initially through the University of Costa Rica Research Foundation (FUNDEVI) – a private organization from the same university – and then directly through the University of Costa Rica. On the final day, 14 February 2014, the university discontinued its administration of the Comprehensive Health-Care Programme (PAIS), resulting in the dismissal of 455 workers, including three members of the executive board of SINDEU, Mr Ricardo Peralta Rivera (doctor), Ms Ana Lucía Solís López (assistant nurse) and Ms Dania Sánchez Rojas (pharmacy technician), who were employees on the PAIS programme and had been elected to the board on 1 July 2013.
- 140.** According to the allegations, these officials had been elected by the members of the union not to be union leaders of the PAIS programme, but union leaders of SINDEU. As such, they are due to perform their institutional union work – and not only work on the PAIS programme – until 30 June 2015. Accordingly, as stated by the complainant, although the PAIS programme finished on 14 February 2014, the university continues as an active institution and remains their employer and, pursuant to clause 67 of the collective labour agreement signed on 26 March 2013 regarding immunity from dismissal, they are granted trade union immunity until “one year after their trade union duties end”. This clause establishes immunity from dismissal for workers on the executive board, who “may be dismissed only if proof is provided before the Industrial Relations Board and the Arbitration Tribunal of any of the grounds set forth in article 81 of the Labour Code”. The immunity from dismissal applies for “up to one year after the day on which their [trade union] duties end”.

- 141.** The complainant trade union states that the protection of union leaders started in 2012 from the moment that they ran for election to the SINDEU executive board, a process which began on 17 April 2013.
- 142.** The complainant trade union indicates that the employer's meeting with the trade union representatives on 2 May 2014 was, regrettably, only held after a ruling by the university legal office that there was no need to resolve the three union leaders' situation.
- 143.** During the meeting, the trade union representatives pointed out to the Rector that the ruling had not taken into account the lack of consultations with the Ministry of Labour and Social Security and the priority in recruitment that should be given to the trade union leaders. The complainant trade union emphasizes that Costa Rica has ratified the Workers' Representatives Convention, 1971 (No. 135), which stipulates that: "workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements". In addition, the Workers' Representatives Recommendation, 1971 (No. 143), in support of this Convention, includes among the measures to protect trade union leaders, the "requirement of consultation with, an advisory opinion from, or agreement of an independent body, public or private, or a joint body, before the dismissal of a workers' representative becomes final" and, "recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce". The protection of the workers' representatives "should also apply to workers who are candidates, or have been nominated as candidates through such appropriate procedures as may exist, for election or appointment as workers' representatives".
- 144.** The complainant trade union alleges that the leaders Mr Ricardo Peralta Rivera, Ms Ana Lucía Solís López and Ms Dania Sánchez Rojas took part, in vain, respectively in 8, 10 and 20 recruitment exercises or competitions but were unsuccessful because of the employer's lack of goodwill and because the employer did not give them priority at the time of the recruitment. The complainant trade union points out that the employer has the option of giving direct contracts for six months or less, as set out in paragraphs (a) and (c) of article 16 of the current collective labour agreement, but the employer did not pursue these options.
- 145.** In its communication dated 22 August 2014, the complainant trade union attached a communication from the Rector's office of the University dated 18 June 2014, repeatedly stating that the reason for terminating the labour relations of the three trade union leaders was the closure of the PAIS programme and recalling that the necessary actions had been taken to allow the officials of the PAIS programme to take part in the university competitions and that, the communication continues, to date they had not been selected for various reasons, such as failure to meet the requirements.

B. The Government's reply

- 146.** In its communication dated 28 January 2015, the Government indicates that, in its complaint, SINDEU alleges that three trade union leaders had been dismissed following the expiry of the agreement between the UCR and the CCSS on the administration of EBAIS. The agreement had been effective between January 2003 and 14 February 2014.
- 147.** The Government summarizes the position of the Rector's office, explaining that the main points contained in the agreement mentioned above may be set out as follows: the principal aim of the employment was for the provision, administration and management of

comprehensive health-care services for the communities of Montes de Oca, Curridabat and San Juan, San Diego, Concepción and San Ramón de Tres Ríos. The UCR was required to ensure the organization, provision and quality of the services, as defined by the CCSS in various technical documents, in order to ensure better coverage, efficiency and effectiveness.

- 148.** The UCR had the role of carrying out health promotion, prevention, treatment and rehabilitation activities under the basic package for primary level health care, including medical services, and laboratory work in clinical, pharmaceutical and dental fields under the proposed conditions. It was agreed to limit the instrument in time to a five-year period.
- 149.** As stated by the complainant trade union, the UCR finished managing the PAIS programme in February 2014. As a consequence of the termination of the aforementioned agreement, the staff contracted by the university under the PAIS programme ended their duties. As, however, the workers themselves were not responsible for this termination, the UCR agreed that all appropriate compensation should be paid to them. In view of the above, the UCR considers that the dismissals do not contravene national and international regulations and did not in any way relate to the positions held by the abovementioned officials as union leaders, but are exclusively a consequence of the termination of the contract and the final closure of the PAIS programme. Accordingly, this was not a matter of the UCR taking a decision to close the PAIS programme without considering the rights of the unionized workers, but rather that the closure affected all employees on the programme in equal measure and they were, furthermore, compensated for all labour-related requirements.
- 150.** Regarding the legality of dismissing workers, including trade union leaders, the Second Chamber of the Supreme Court of Justice indicated that “...their inclusion in this group of dismissals is justifiable provided that there exists, as mentioned, an objective reason for it (articles 132 and 139 of the General Public Administration Law)”.
- 151.** The employer’s representative of the UCR states in report No. R-5872-2014 that the trade union was aware, since 2012, of the date on which the programme was ending. In this regard, the extensions granted to this contract were aimed at transferring the EBAIS programmes administered by the UCR-PAIS programme to the CCSS or to the body which the university assigned to do the recruitment. The intention of the trade union leaders involved to join together, from the point of view of the employer’s representative, is a way of making the university retain them in their posts despite the closure, by invoking the special protection that they enjoy under their trade union immunity.
- 152.** The Government points out that the university has emphasized that, since the announcement of the final closure of the PAIS programme and until the handover was complete, it had held regular meetings with SINDEU, as well as negotiations on the matter. The trade union nevertheless called a strike on the grounds, in particular, of the following points: (1) opposition to the termination of the CCSS-UCR-PAIS contract; (2) the degradation in the quality of life of the users in the communities served following the closure of the programme and also the dismissals procedure; (3) the irregular way in which the CCSS supposedly went about handling the new direct recruitment (2013CD-000061-05101); and (4) the awarding of the contract by the CCSS to the Hospital UNIBE SA for 36 EBAIS, with the closure of nine EBAIS. On this occasion SINDEU also requested the UCR to guarantee the jobs of the 450 workers and to cancel the awarding of the contract for the 36 EBAIS located in the cantons of Curridabat, Montes de Oca and La Unión.
- 153.** As expressed in the report of the UCR, the strike movement was formed illegally and without justification. On 11 November 2013, many workers stopped the provision of health-care services and only nine of the 45 EBAIS worked on that day. A number of UCR

officials conducted an inspection into EBAIS that were not working and discovered that the facilities had been chained and locked up. Moreover, according to the official records of these events, the main entrances had been sealed and so action had to be taken to gain access to these locations.

154. Subsequently, SINDEU and UCR representatives held a meeting on 13 November 2013, in which the trade union agreed to call off the strike and for the workers to return to work at the various EBAIS, although the trade union failed to comply with the agreement.
155. The Rector of the UCR states that the university endeavoured to act in a responsible manner at all times, respecting each of the agreements which it had made with the complainant trade union, and at no time restricted the union rights of the members of the SINDEU executive board or the special status which these rights entailed.
156. In its resolution No. 073-2014, the Employment Tribunal of the Second Judicial Circuit of San José upheld the ruling that the strike was illegal and confirmed the judgement of the Labour Court of 22 November 2014, which it had handed down in the EBAIS of Tirrases, Curridabat, Cipreses and Guayabos, Granadilla de Curridabat, San Rafael, Mercedes, Vargas Araya, Lourdes and San Pedro.
157. Moreover, when the CCSS filed a request for an interim measure to compel the UCR to continue offering the services, the Administrative Disputes Tribunal handed down judgement No. 620-2013-T of 22 March 2013, declaring as follows:

... It therefore appears at the very least unreasonable and even rash, in the view of this judge, that the Fund [CCSS] is seeking an interim measure to constrain the University of Costa Rica to continue offering an essential public service owned by the CCSS and not the university when it has known for at least one year of the university's intentions and financial reasons and also that it should insist on the service being provided by the UCR on terms and conditions that the CCSS deems fit, even though it is aware that the costs recorded by the university services are accurate and considerably higher and recognized as such by the CCSS. On the grounds of the effects on the health of the insured parties (...), it appears that the CCSS, in the view of this judge and based on an analysis of the evidence submitted, is aiming to constrain the UCR to provide a service on loss-making conditions, outside the framework of the agreements signed between the parties themselves, and despite recognizing that the costs are real, in an attempt to make up for its administrative inactivity over the course of at least one year and its failure to plan ahead, so as to guarantee the provision of health services which are the obligation of the CCSS and not of the UCR...

158. The above shows that the institutional decision of the UCR was never intended to discriminate against the trade union representatives and that this was not a discriminatory dismissal on the basis of their status.
159. In this context, since it was not a matter of reorganizing the PAIS programme – in which case an assessment could have been made of which people to keep on and under which circumstances preference could have been given to the union leaders if possible – the closure involved all staff.
160. The trade union is therefore not correct in claiming breach of the protection afforded under trade union immunity to Mr Ricardo Peralta Rivera, Ms Ana Lucía Solís López and Ms Dania Sánchez Rojas, who had been elected to the executive board of SINDEU (no longer in the PAIS programme), precisely because the dismissals did not represent a decision by the higher authorities of the UCR but occurred when the programme in question definitively closed, a situation which affected all workers, including those appointed as union leaders.

161. Nevertheless, the fact that the officials in question were members of the SINDEU executive board was taken into consideration in the agreement made around the negotiating table between the UCR and SINDEU to call off the strike movement of the employees on the PAIS programme, and a provisional article was subsequently included enabling these officials to take part in various internal competitions under conditions identical to those of the other university officials and for a specific time period (from 15 February 2014 to 13 February 2015).
162. It should be clarified, however, that none of the university's higher administrative offices interfere in the internal competitions of the various sections, which select their own officials in accordance with the criteria set out in relevant regulations, or in the consideration of the suitability of the candidates being assessed.
163. The above demonstrates the willingness of the university authorities to promote opportunities and reduce the harm that may have been caused to the officials in question, obviously within the limits of independence and impartiality which university offices must respect when recruiting staff for the university.
164. Seen from this perspective, this case demonstrates the good faith of the university authorities and the efforts being made in the country to keep spaces of dialogue with the trade unions open and to ensure that, in their day-to-day activities, institutions keep in line with the provisions of the ILO international conventions ratified by Costa Rica.
165. Based on the arguments of fact and law set out, the Government of Costa Rica requests the Committee on Freedom of Association to set aside the complaint lodged in all its aspects.

C. The Committee's conclusions

166. *The Committee observes that, in the present complaint, the complainant, SINDEU, claims that ILO Convention No. 135, ratified by Costa Rica, and the current collective agreement were violated through the dismissal of three members of its executive board, and that the PAIS programme in which the three worked as doctor, assistant nurse and pharmacy technician was terminated following successive renewals of an agreement between the university and the CCSS (which led to the PAIS health-care programme for various communities in the country). Although the three persons in question had the opportunity to enter competitions, they were unsuccessful, according to the complainant, because of the employer's lack of goodwill. The complainant trade union alleges that the employer procrastinated when the trade union requested consideration of the case.*
167. *The Committee notes the Government's statements to the effect that: (1) the university discontinued the PAIS programme in February 2014 and as a consequence of the final closure of the programme (and the termination of the agreement, between the university and the partner, the CCSS, which had initiated the programme), all the employees (including the three union leaders mentioned by the complainant trade union), had completed their activities and that, consequently, this does not constitute anti-union discrimination and the termination of the work of the three individuals in question was not occasioned by their status as leaders; (2) as the workers themselves were not responsible for this termination, the UCR went ahead and paid all appropriate compensation; (3) the complainant trade union was aware since 2012 of the date on which the programme was ending; the extensions that were signed thereafter aimed to transfer the administrative services to the CCSS or to the body assigned by the university to carry out the recruitment; (4) the intention of the trade union leaders involved to join together, from the point of view of the employer's representative, is a way of making the university retain them in their posts despite the closure; (5) in response to the allegation of delays in the dialogue, the university indicates that, since the announcement of the final closure of the PAIS*

programme and until the handover was complete, it held regular meetings with SINDEU, as well as negotiations on the matter; the trade union nevertheless called a strike in 2013 opposing the handover of the services, and this was declared illegal by the judicial authorities; (6) after the strike, the university respected each of the agreements which it had made with the complainant trade union; and (7) the fact that the officials in question (the three union leaders) were members of the SINDEU executive board was taken into consideration in the agreement made around the negotiating table between the university and SINDEU to call off the strike movement, and a provisional article was subsequently included, enabling these officials to take part in various internal competitions under conditions identical to those of the other university officials and for a specific time period (from 15 February 2014 to 13 February 2015); however, faced with the allegation of a lack of good will by the rector's office to resolve the problem through the competitions, the university states that its higher administrative offices do not interfere in the internal competitions of the various sections, which select their own officials in accordance with the criteria set out in relevant regulations.

168. *The Committee observes that, in the current case, the dismissal of the three union leaders of the complainant trade union was not motivated by their status as union leaders or their trade union activities, but observes that the complainant trade union also defends its application for the three leaders to be reinstated by invoking clause 67 of the current collective agreement which covers the immunity of the university union leaders.*

169. *In this regard, the Committee observes that clause 67 of the current collective agreement (reproduced in the complainant's allegations) stipulates that members of the trade union's executive board may only be dismissed for reasons covered in article 81 of the Labour Code if proof is provided before the Industrial Relations Board and the Arbitration Tribunal, and that their immunity from dismissal protects them for up to one year after the day on which their trade union duties end. On these points, the Committee observes that the Government did not communicate that this procedure has been followed in the present case or how long the immunity lasts. In light of the above, the Committee requests the Government to ensure that the provisions contained in the collective agreement and the November 2013 agreement are fully respected.*

The Committee's recommendation

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

The Committee requests the Government to ensure that the collective agreement and the November 2013 agreement are fully respected.

CASE NO. 2753

INTERIM REPORT

**Complaint against the Government of Djibouti
presented by
the Djibouti Labour Union (UDT)**

Allegations: The complainant denounces the closure of its premises and the confiscation of the key to its letter box by order of the authorities, the intervention of the police at a trade union meeting, the arrest and questioning of trade union officials and the general ban on trade unions from holding any meetings

- 171.** The Committee last examined this case at its June 2014 meeting [see 372nd Report, paras 110–124, approved by the Governing Body at its 321st Session].
- 172.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case twice. At its March 2015 meeting [see 374th Report, para. 5], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any information.
- 173.** Djibouti has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 174.** At its June 2014 meeting, the Committee made the following recommendations [see 372nd Report, para. 124]:
- (a) The Committee requests the Government to provide further details in relation to the reasons behind the three-month detention of the protesting dockworkers.
 - (b) The Committee expects the Djibouti Labour Union (UDT), under the leadership of Mr Adan Mohamed Abdou, to be able to participate effectively in the work of all national and international advisory bodies, together with all the other organizations representing employers and workers in the country.
 - (c) The Committee can only firmly urge the Government to give priority to promoting and defending freedom of association and to allow the development of free and independent trade unionism. To that end, the Committee expects the Government to maintain a social climate free of acts of anti-union interference and harassment, in particular against the UDT.

B. The Committee's conclusions

- 175.** *The Committee regrets that the Government has not provided a reply to its recommendations even though it has been invited to do so on several occasions, including*

through an urgent appeal. The Committee urges the Government to cooperate with its procedures in the future.

- 176.** *Under these circumstances, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1971)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
- 177.** *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for this freedom in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, para. 31].*
- 178.** *The Committee recalls that this case concerns allegations of interference by the authorities in trade union activities and acts of intimidation against the trade union officials of the Djibouti Labour Union (UDT) and that its latest recommendations concerned, generally, the need to allow the UDT to participate effectively in the work of all national and international advisory bodies, together with all the other organizations representing employers and workers in the country and, more specifically, the need for the Government to provide further information on the allegations of acts of violence by the authorities against dockworker union members who were holding a peaceful demonstration.*
- 179.** *The Committee recalls, regarding the allegations concerning the arrest of 62 dockworkers, members of the Dockworkers' Union, during the demonstration of 2 January 2011 in front of Parliament, and their detention for three months, that the Government has previously stated that it has not received any complaint from the Union and did not have any information in that regard. The Committee notes with concern that the Government has not provided the requested information on this matter. The Committee cannot be satisfied with this silence and is therefore bound to reiterate its previous recommendations. The Committee expects the Government to be more cooperative in the future.*
- 180.** *Lastly, in the light of the history of this case and the Government's failure to meet its obligation to provide information, the Committee also reiterates its previous recommendations by again urging the Government to maintain a social climate free of acts of anti-union interference and harassment, in particular against the UDT, and to allow that organization to participate effectively in the work of all national and international advisory bodies, together with all the other organizations representing employers and workers in the country.*

The Committee's recommendations

- 181.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee urges the Government to conduct an investigation into the three-month detention of the protesting dockworkers in 2011 and to inform it of the outcome.*
- (b) *The Committee expects the Djibouti Labour Union (UDT) to be able to participate effectively in the work of all national and international advisory*

bodies, together with all the other organizations representing employers and workers in the country.

- (c) *The Committee expects the Government to give priority to promoting and defending freedom of association by allowing the development of free and independent trade unionism and maintaining a social climate free of acts of anti-union interference and harassment, in particular against the UDT.*
- (d) *The Committee requests the Government to provide detailed information on the outstanding issues for examination at its next meeting in October/November 2015 and expects significant progress in this regard.*

CASE NO. 3071

DEFINITIVE REPORT

**Complaint against the Government of the Dominican Republic
presented by
the National Confederation of Trade Union Unity (CNUS)**

Allegations: Refusal by the authorities to meet with the officials of the Labour Inspectors' Association of the Dominican Republic; relocations of trade unionists and warnings against them for participating in a peaceful protest

- 182.** The complaint is contained in a communication of the National Confederation of Trade Union Unity (CNUS) dated 3 April 2014.
- 183.** The Government sent its observations in a communication of 29 July 2014.
- 184.** The Dominican Republic has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant organization's allegations

- 185.** In its communication dated 3 April 2014, the CNUS alleges that, since its foundation, the Labour Inspectors' Association of the Dominican Republic (ASITRAREDO) endeavoured to facilitate the improvement of inspection services by all legal means, through enhanced quality of inspections, improved conditions under which labour inspectors carry out their activities and better living and working conditions for them. In this context, ASITRAREDO requested, first verbally and later in writing, to meet with the Minister of Labour in order to discuss the topics of concern to the Association and the labour inspectors. The requests to meet and establish a forum for dialogue between the Ministry and the Association went unheeded.
- 186.** The complainant organization further states that in retaliation for the requests made and its trade union and association activities, the Minister of Labour sent ten inspectors, including Mr Enemencio Matos Gómez (President of the Association), Ms Evelyn Geraldina Mejía

Mejía (Finance Secretary), Ms Elizabeth Batista (member of the Disciplinary Tribunal) and Mr Víctor Guerrero Ogando (External Relations Secretary), to remote centres. The other jurisdictions were extremely far from the places where they had been carrying out their functions, where their families were based and where research is conducted to improve their skills, and this caused them serious financial, family and other difficulties.

187. The complainant organization alleges that, when the Minister of Labour refused ASITRAREDO's request for a meeting, the Association drew up the list of topics that it needed to discuss and, in a communication received by the Minister's office on 16 November 2012, went into detail about each and every aspect that needed to be considered and resolved jointly by the parties, while repeating the request for a meeting. The planned topics included: the reinstatement to their previous posts of those who had been relocated; various economic demands; the provision of an area within the Ministry of Labour to be used as premises by the Association and to bring together the inspectors, supervisors and local labour representatives; the requirement that vacancies for local representatives be filled through an internal competition in which all inspectors who enter take part on equal terms.
188. As the Association did not receive a response to this communication from the Minister either and the problems raised continued to adversely affect the inspectors, the Association devised and implemented a plan of action to make their voices heard and address their demands; the actions planned included a protest in front of the Ministry of Labour.
189. The complainant organization specifies that a protest was indeed held by ASITRAREDO in front of the Ministry of Labour at 11 a.m. on 5 November 2013, with the coordination and support of the CNUS, and unfolded peacefully and with complete respect for people and property. However, instead of receiving and meeting the Association's representatives to discuss how to solve the problems which had been raised by the Association, on 11 November 2013, in retaliation for the legitimate claims of the ASITRAREDO members, the Minister of Labour issued warnings to the trade union officials, Mr Enemencio Matos Gómez, Mr Agustín del Carmen, Mr Víctor Guerrero Ogando, Ms Evelyn Geraldina Mejía Mejía and Mr Juan Manuel Mercedes Montaña, as well as 14 other members. In retaliation for the trade union activities and the scope of the freedom of association for labour inspectors, the Minister of Labour therefore took actions which constitute a flagrant violation, not only of the national Constitution, but also of ratified ILO Conventions on freedom of association.

B. The Government's reply

190. In its communication of 29 July 2014, the Government states that an analysis of the complaint filed by the CNUS highlights various aspects which warrant individual responses. Concerning the comment submitted by the CNUS implying that the Dominican authorities, and specifically the Ministry of Labour, have been ignoring ASITRAREDO, it is important to note that at no time has the Ministry of Labour undermined freedom of association of any Ministry of Labour employees in word or deed. On the contrary, since the founding of the Association, the Ministry has encouraged and supported every board which has headed the Association. It is worthwhile mentioning the support offered to the first board, chaired by the Inspector Supervisor Mr Dionicio Morel, followed by the board led by Mr Andrés Valentín Herrera (current Director-General of Labour), and also the boards chaired by Mr Daniel Jiménez, and currently Mr Enemencio Matos (current President of the Board). Mr Enemencio Matos has been received by the Minister individually and through the Association's commissions.
191. With regard to the various requests which ASITRAREDO made to the Minister, the Minister appointed a commission as a viable response to the Association's various

concerns. The Commission was headed by a deputy minister, the Director-General for Labour and the Inspection Coordinator and they held a number of follow-up meetings dedicated to each and every concern raised by the Association.

192. In addition, with regard to the allegation that labour inspectors have been sent to remote areas as retaliation for the requests made, the Government points out that, given the fact that 60 per cent of inspectors live and have their families in the country's two main cities (Distrito Nacional and Santiago de los Caballeros), they can potentially be affected by routine relocations to other cities across the entire country, where the rest of the labour offices (40 offices) are located. As proof that there is no malicious intent in the changes made in recent years, the President of ASITRAREDO, Mr Enemencio Matos, was sent to a representative office that brings him 90 miles closer to his house, while Mr Víctor Guerrero Ogando, the Association's External Relations Secretary, was brought 50 miles closer from where he had previously worked. The Government stresses that each of the labour inspectors, once employed, are informed of the need to be in jurisdictions which can potentially be far from their home, to which they agree. They therefore consent both to regular relocation and to moving to offices which are not in their place of residence. The Government attaches copies of these consent forms.
193. With regard to the list of topics submitted by ASITRAREDO to the Ministry of Labour, the Government indicates that the Ministry has gradually been responding to each of the topics and sending numerous clarifications in that respect, including regarding the economic aspect of the working conditions and the competitions. In response to the request by ASITRAREDO for physical space on the premises of the Ministry of Labour, the Government states that the Ministry has always offered the facilities, as demonstrated by the office granted to ASITRAREDO and the spaces provided to the Association each time that it had requested. That matter should therefore not be a cause of concern for the Association.
194. Regarding the allegation that a group of inspectors had been penalized ("warned") for protesting about the failure of their claims to be met, the Government emphasizes that both the national Constitution and Act No. 41-08 on the Civil Service and its implementing regulations fully safeguard the right of civil servants to carry out any protests which they consider important. However, Act No. 41-08 itself governs how to file any kind of claim, and that procedure was not observed by various inspectors who caused work stoppages on 5 November 2013, affecting the public service applications that citizens normally make to the Ministry of Labour. As a consequence, the work stoppages took the Ministry of Labour by surprise and it could not prepare a response for the users (Act No. 41-08, art. 32(4)). The Government reiterates that the country is open to receive any guidance from the International Labour Organization regarding the topics raised in this report and also stresses that it remains intent on ensuring effective compliance with legal standards, whether national or international, in order to guarantee industrial peace in the employer-employee relationship.

C. The Committee's conclusions

195. *The Committee observes that in this complaint, the CNUS alleges: (1) the refusal of the Minister of Labour to meet and discuss with ASITRAREDO representatives in order to improve labour inspectors' inspection tasks and living and working conditions; copies of letters from the Association requesting an audience with the Minister of Labour were sent on 22 October 2012, 10 April 2013 and 2 August 2013; (2) the sending of ten labour inspectors to remote areas in retaliation for the requests and trade union activities and thereby causing them economic harm and family difficulties; among those sent were the trade union officials Mr Enemencio Matos Gómez (President of the Association), Ms Evelyn Geraldina Mejía Mejía (Finance Secretary), Ms Elizabeth Batista (member of*

the Disciplinary Tribunal) and Mr Víctor Guerrero Ogando (External Relations Secretary); (3) the refusal of the Minister of Labour to have a meeting requested by the Association with a list of topics to be discussed (which was received by the Minister's office on 16 November 2012); the topics include: the reinstatement to their previous posts of those who had been relocated; various economic demands; the provision of an area within the Ministry of Labour to be used as premises by the Association and bring together the inspectors, supervisors and local labour representatives; the requirement that vacancies for local representatives be filled through an internal competition in which all inspectors who enter take part on equal terms; (4) as no response was given to the communication received by the Minister's office, the Association implemented a plan of action which included a plan for a protest, that took place in front of the Ministry of Labour at 11 a.m. on 5 November 2013 and unfolded peacefully, with support from the CNUS; (5) in retaliation for the protests, on 11 November 2013, the Minister of Labour issued a warning to the trade union officials, Mr Enemencio Matos Gómez, Mr Agustín del Carmen, Mr Víctor Guerrero Ogando, Ms Evelyn Geraldina Mejía Mejía and Mr Juan Manuel Mercedes Montaña, as well as 14 other members.

- 196.** *The Committee takes note of the Government's statements that: (1) the President of the Association, as well as the previous presidents, had been received on numerous occasions by the Ministry of Labour both individually and through the Association's commissions which it headed; (2) in response to the Association's concerns, the Minister appointed a commission headed by the Deputy Minister, the Director-General for Labour and the Inspection Coordinator, and they held a number of follow-up meetings dedicated to each and every issue raised, as detailed in the Government's reply, regarding economic aspects and the granting of an office to the Association (which did take place) and, when requested, other spaces; (3) with regard to the alleged sending of inspectors to remote locations as retaliation for the Association's requests, there had been no malicious intent and the inspectors in question had given their written consent to regular changes of destination to jurisdictions that could be far from their homes, given that there were 40 labour offices spread across the entire country; the current President of the Association (Mr Enemencio Matos Gómez) and the External Relations Secretary (Mr Víctor Guerrero Ogando) had been sent to destinations which brought them respectively 90 and 50 miles closer to their homes; (4) with regard to the alleged warning issued to 19 inspectors, current legislation safeguards the rights of civil servants to carry out any protests which they consider important, but the inspectors who caused work stoppages on 5 November 2013 did not observe the procedure of Act No. 41-08 on the Civil Service, which governs how to present any kind of claim and they affected the public service applications that citizens normally make to the Ministry of Labour. As a consequence, the work stoppages took the Ministry of Labour by surprise and it could not prepare a response to the users; (5) the Ministry of Labour at no time undermined the freedom of association.*
- 197.** *The Committee concludes that the Government denies that there had been no dialogue with the Association, claiming that it had sent sufficient proof in that respect. It denies that the relocations or warnings of the inspectors were anti-trade union measures and stresses that they were legal and that it had been taken by surprise by a protest in front of the Ministry which disrupted the services to which users are entitled.*
- 198.** *The Committee welcomes the Government's statement that it is open to receive any guidance from the ILO regarding the topics raised and, on account of the discrepancy between the versions of the complainant and the Government, wishes to draw the following conclusions: the main problem at the root of this complaint is the relocation of ten inspectors belonging to the Association, including five officials of the Association, one of which is its President, although they had given their written consent to regular relocations. Furthermore, one of the Association's claims filed by the complainant organization, as described in the attachments, consists in creating a framework regulation to re-establish*

the form, methods and reasons for the relocations. The Committee invites the Government to examine this proposal with the Association.

- 199.** *With regard to the warning given to five trade union officials and 14 other members of the Association for holding a protest in front of the Ministry of Labour (a peaceful one according to the trade union) which the Government claims to have taken it by surprise and therefore to have been a violation of Act No. 41-08, since it unduly disrupted user services, the Committee, taking into account the Government's statements that the Association's set of demands have been submitted to a high-level commission which has considered each of the problems raised, suggests that, in the interest of restoring harmonious relations between the parties, the Government and the Association jointly consider the possibility of re-examining the warnings given to the trade unionists in a constructive spirit.*

The Committee's recommendations

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

- (a) With regard to the alleged relocations of inspectors, the Committee invites the Government to examine, with ASITRADERO, the Association's proposal to create a framework regulation to re-establish the form, methods and reasons for the relocations.*
- (b) With regard to the alleged warnings, in order to restore harmonious relations between the parties, the Committee suggests that the Government and the Association jointly consider the possibility of re-examining the warnings issued to trade unionists in a constructive spirit.*

CASE NO. 3025

DEFINITIVE REPORT

Complaint against the Government of Egypt presented by

- **the Egyptian Federation of Independent Trade Unions (EFITU)**
- **the Egyptian Democratic Labour Congress (EDLC) and**
- **the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)**

supported by

the International Trade Union Confederation (ITUC)

Allegations: The complainant organizations allege serious and systematic violations of the right to freedom of association, including legislative issues related to restrictions of the right to strike and interference in election processes, and of the right to organize and to bargain collectively

- 201.** The Committee last examined this case at its May–June 2014 meeting, when it presented an interim report to the Governing Body [see 372nd Report, paras 125–156, approved by the Governing Body at its 321st Session (June 2014)].
- 202.** The Government forwarded its observations in communications dated 15 July 2014 and 10 March 2015.
- 203.** Egypt 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

204. In its previous examination of the case, the Committee made the following recommendations [see 372nd Report, para. 156]:

- (a) The Committee cannot but regret that, despite the Declaration of 12 March 2011 affirming the right to freedom of association, the Government has to date yet to adopt the necessary legislative framework to ensure full legal recognition to the numerous newly formed independent unions, which has apparently had disastrous effects on industrial relations in practice.
- (b) Welcoming that the final draft law on trade union organizations and protection of the right to organize abandons the single trade union system and recognizes trade union pluralism, the Committee firmly expects that the draft law will be adopted as a matter of priority giving clear legislative protection to the numerous newly formed independent trade unions and ensuring full respect for freedom of association rights (including the right of these organizations to freely elect their representatives, organize their administration and activities and bargain collectively). In particular, recalling that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions, the Committee expects that the law will guarantee comprehensive and effective protection against anti-union discrimination of all leaders and members of the new independent unions. It requests the Government to transmit a copy of the law once adopted.
- (c) The Committee requests the Government to repeal or amend the relevant provisions of Part 15 of Book Three and Part 13 of Book Two of the Penal Code so as to guarantee full respect of the principles enunciated in its conclusions, and to ensure that their application in practice does not impede the legitimate exercise of trade union rights. The Committee also requests the Government to provide a copy of and detailed information on, the new Act on organizing demonstrations which replaces the repealed Act No. 96/2012.
- (d) The Committee, recalling the importance it attaches to the right of workers to elect their representatives in full freedom without any interference from the public authorities, requests the Government to take the necessary steps to repeal Decree No. 97/2012.
- (e) The Committee generally expects that the provisions of the new Constitution as amended by the referendum held on 14 and 15 January 2014 are not applied in such a manner as to restrict the legitimate exercise of the freedoms of speech, assembly and association.
- (f) Moreover, as regards the complainants' specific allegations concerning the enterprise Kraft/Mondelez, the Committee requests the Government, in view of the apparent systematic resort to acts of anti-union discrimination at the abovementioned company and the number of workers allegedly affected, to also initiate an independent investigation into the allegations of acts of anti-union discrimination of 2011 (compulsory retirement of 38 workers for attempting to establish an independent union), 2012 (dismissal of five leaders of the independent union following a work stoppage and demonstration) and 2013 (transfer of 35 known union supporters and workers having given testimony at the court proceedings over anti-union dismissals), and to keep the Committee informed of its outcome. The Committee further requests to be kept informed

of the final outcome of the ongoing judicial proceedings referred to by the Government over the five alleged anti-union dismissals of union officials in 2012 and of all measures of redress taken. Should it be found (during the investigation or the court proceedings) that the relevant trade union leaders and members were dismissed or otherwise prejudiced due to their exercise of legitimate trade union activities (including founding a new union or calling industrial action) or on account of their union affiliation, the Committee requests the Government to take the necessary measures to ensure that they are fully reinstated without loss of pay or transferred back to the original duty station. In the event that reinstatement or re-transfer is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the worker concerned is paid adequate compensation which would constitute a sufficiently dissuasive sanction for anti-union discrimination.

B. The Government's reply

205. In its communications dated 15 July 2014 and 10 March 2015 the Government provides information regarding the alleged forced retirement, dismissals and transfers from the Kraft/Mondelez enterprise. In particular, the Government indicates that the complaint has been independently reviewed by the Directorate of Manpower, which has concluded to the following:

- (a) There has been no discrimination against the members of the union's executive board. The company has independent unions at all its branches and they are dealt with in accordance with the law and regulations.
- (b) The retirement of 38 workers was effected in accordance with the law. The workers filed applications to retire and these were accepted by the management, which paid them all their financial entitlements (two and half months' wages for each year of service; the balance of leave; three months' wages for those with more than ten years of service and two months to those with less than 10 years of service).
- (c) The five dismissed employees were all reinstated (four workers following reconciliation procedures and one worker by a court order). They are now back at work and secure in their jobs.
- (d) Regarding the allegation of the arbitrary transfer of 35 workers, it appears that the company had established a new factory at Borg el-Arab. Experienced workers were chosen to be transferred to this factory in return for greater benefits. The transfer was conducted in accordance with workers' contracts of employment and the legislation in force.

206. In a communication dated 27 May 2015, the Government transmitted a copy of Law No. 107 of 2013 on the right to peaceful public meetings, processions and protests.

C. The Committee's conclusions

207. *The Committee recalls that in the present case, the complainant organizations alleged that the Government was not taking the necessary steps, in law or in practice, to allow for the establishment of a free and democratic trade union movement and had further allowed employers to violate the workers' right to freedom of association with near impunity, referring, in particular to the acts of anti-union discrimination at the Kraft/Mondelez enterprise.*

208. *The Committee notes that in its communications dated 15 July 2014 and 10 March 2015, the Government provides information regarding the alleged forced retirement, dismissals and transfers from the abovementioned enterprise. In particular, the Government indicates*

that the complaint has been independently reviewed by the Directorate of Manpower, which concluded that: (1) the retirement of 38 workers was effected in accordance with the law and on the basis of workers' written applications and that all of them received financial compensation to which they were entitled; (2) all five dismissed employees have been reinstated (following either reconciliation procedure or the court ruling); and (3) the transfer of 35 workers was effectuated in accordance with their contracts of employment and the legislation in force. The Committee expects that the union will be able to fully exercise its trade union rights without intimidation or interference.

- 209.** *The Committee regrets that no information has been provided on the following outstanding legislative issues: (1) the adoption of the law on trade union organizations and protection of the right to organize recognizing trade union pluralism and guaranteeing comprehensive and effective protection against anti-union discrimination; (2) abrogation or amendment of the relevant provisions of Part 15 of Book Three and Part 13 of Book Two of the Penal Code so as to ensure that their application in practice does not impede the legitimate exercise of trade union rights; and (3) repeal of Decree No. 97/2012 so as to ensure the right of workers to elect their representatives in full freedom without any interference from the public authorities. The Committee therefore reiterates its previous recommendations and expects that the Government will transmit its reply, in light of the ratification of Conventions Nos 87 and 98 to the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

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

- (a) The Committee cannot but regret that, despite the Declaration of 12 March 2011 affirming the right to freedom of association, the Government has to date yet to adopt the necessary legislative framework to ensure full legal recognition to the numerous newly formed independent unions, which has apparently had disastrous effects on industrial relations in practice.*
- (b) Observing that the final draft law on trade union organizations and protection of the right to organize that was shared with the Committee abandons the single trade union system and recognizes trade union pluralism, the Committee firmly expects that the draft law will be adopted as a matter of priority giving clear legislative protection to the numerous newly formed independent trade unions and ensuring full respect for freedom of association rights (including the right of these organizations to freely elect their representatives, organize their administration and activities and bargain collectively). In particular, recalling that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions, the Committee expects that the law will guarantee comprehensive and effective protection against anti-union discrimination of all leaders and members of the new independent unions.*
- (c) The Committee requests the Government to repeal or amend the relevant provisions of Part 15 of Book Three and Part 13 of Book Two of the Penal Code so as to ensure that their application in practice does not impede the legitimate exercise of trade union rights.*

- (d) *The Committee, recalling the importance it attaches to the right of workers to elect their representatives in full freedom without any interference from the public authorities, requests the Government to take the necessary steps to repeal Decree No. 97/2012.*
- (e) *The Committee generally expects that the provisions of the new Constitution as amended by the referendum held on 14 and 15 January 2014 are not applied in such a manner as to restrict the legitimate exercise of the freedoms of speech, assembly and association.*
- (f) *The Committee expects that the Government, in light of its ratification of Conventions Nos 87 and 98, will transmit detailed information and supply a copy of the Law on trade union organizations and protection of the right to organize to the Committee of Experts on the Application of Conventions and Recommendations.*

CASE No. 2871

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

Complaint against the Government of El Salvador presented by

- **the Trade Union Confederation of El Salvador Workers (CSTS)**
- **the Trade Union Federation of Food, Beverage, Hotel, Restaurant and Agro-Industry Workers of El Salvador (FESTSSABHRA) and**
- **the LIDO SA de CV Company Trade Union (SELSA)**

Allegations: A strike at the LIDO SA de CV company was declared illegal, the union's leader was arrested and workers' representatives were dismissed

- 211.** The Committee examined this case at its November 2012 and May–June 2014 meetings and, on the latter occasion, presented an interim report [see 372nd Report, paras 157–173, approved by the Governing Body at its 321st Session (June 2014)].
- 212.** The Government sent new observations in a communication dated 27 February 2015.
- 213.** El Salvador 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

- 214.** At its May–June 2014 meeting, the Committee made the following recommendations on the matters still pending [see 372nd Report, para. 173]:

...

- (b) The Committee once again requests the Government to keep it informed of the revision requested by the trade union of the collective agreement at LIDO SA de CV, which is due to expire.
- (c) The Committee once again requests the Government to clarify whether union leader Guadalupe Atilio Jaimes Pérez (whose release was ordered by the judicial authority) is still facing charges and, if so, to inform it of the court ruling.
- (d) With respect to the allegation relating to the declaration of the strike as illegal, the Committee observed in its previous examination of this case that the objective of the strike was a wage increase and that the declaration of the illegality of the strike on this basis did not appear to be justified. The Committee once again expresses its concern and requests the Government to inform it of the judicial ruling declaring the workers' strike at LIDO SA de CV to be illegal.
- (e) The Committee once again observes that the Government has still not responded to the allegation regarding the dismissal of trade unionists Ana María Barrios Jiménez, María Isabel Oporto Jacinta and Oscar Armando Pineda, and once again requests it to send its observations without delay.
- (f) The Committee requests the Government to send its observations relating to the complainants' additional information dated 9 July 2013.
- (g) The Committee requests the Government to obtain the company's comments on the pending questions via the employers' organization concerned.

215. With respect to the information provided on 9 July 2013, mentioned in recommendation (g), the complainants stated that, on 2 September 2011, as part of the collective bargaining taking place as the collective agreement was due to expire, the SELSA trade union requested the Ministry of Labour to invite the company to the direct negotiation and conciliation stages. Article 1 of the preliminary draft of the collective agreement which SELSA was expecting to negotiate included all workers working directly or indirectly for LIDO SA de CV at the Boulevard plant who were subcontracted by FAMOLCAS SA de CV (which shared the same owners as LIDO SA de CV). This also contributed to the company's intransigence, since it maintained a double standard by paying subcontracted workers less. The wages of the workers in the company are among the lowest in the industry in the country, at only US\$281.40 per month plus some benefits payable under the collective agreement. The wages of workers subcontracted by FAMOLCAS are even lower, at between \$229 and \$240 per month without any additional benefits.

216. The complainants also state that the enterprise did not attend the direct negotiations or the conciliation meetings organized by the Ministry of Labour in 2012, nor did it respond to the trade union's proposal of voluntary arbitration. As a result, the union was legally entitled to call a strike from 21 February to 20 March 2012. Following a personal intervention from the Minister of Labour, the company participated in a dialogue forum. However, its representatives attended merely to argue that, as a result of family disputes, the companies, which were under the control of their family members, owed them \$5 million, and that, in order to absorb the debt, they had planned to recover \$1.2 million in expenses annually over four years between 2010 and 2014, during which period they were not in a position to increase wages. In other words, the company's proprietors requested the workers to accept a pay freeze, which had so far lasted four years, and it would take a further two years to pay the costs of the family dispute.

217. In view of the company's intransigence concerning participation in the collective bargaining stages, SELSA completed all of the legal procedures and informed the Director-General of Labour that the strike had broken out on 19 March 2012. SELSA, through its General Secretary, requested that the action be characterized as a strike since

the company did not wish to do so. Thus began the proceedings of the Fourth Labour Court of San Salvador. The bargaining unit party to the dispute leading to the strike comprised 151 workers of the company, 57 per cent of whom supported the strike, thus exceeding the 51 per cent required by law. However, as a result of undue influence from the company, the Fourth Labour Court unlawfully included the subcontracted workers in the count. (It was the union's intention to include them in the future, but they did not belong to the bargaining unit at that time.) The Court also included in the count 14 company directors who are registered with the company for social security purposes but who are its proprietors. The judge declared the strike unlawful without considering all these irregularities. This demonstrates, once again, the shortcomings of the existing mechanisms in the legislation of El Salvador.

B. The Government's reply

- 218.** In its communication dated 27 February 2015, the Government states, with regard to recommendation (b) from the previous examination of the case, that the revision of the collective agreement at LIDO SA was requested by SELSA on 2 September 2011. The list of demands was sent to the enterprise on 5 October 2011, but no rapprochement with the trade union was reached within the following 24 hours. The enterprise did not attend the direct negotiations and conciliation meetings organized by the Ministry of Labour on 25 October 2011 and 20 January 2012, nor did it respond to the trade union's request for voluntary arbitration. In light of the foregoing, the trade union adopted a decision to call a strike at a meeting attended by 87 of the company's 151 workers and the Ministry of Labour notified the company accordingly on 20 February 2012.
- 219.** The Government adds that subsequently (on 16 March 2012) the two parties met to begin the revision of the collective labour agreement. They agreed to proceed on a clause-by-clause basis and to meet again on 19 March 2012. However, the Ministry of Labour received a letter from the trade union, notifying, pursuant to article 531 of the Labour Code, the beginning of the strike. The Director-General of Labour decided to inform the parties, and particularly the company, of the strike and notified them that they must declare, within the legal time limit, whether they wished to exercise the right, enshrined in article 532 of the Labour Code, to meet with the trade union and determine the number, type and names of the workers who would remain on the job at the company; the two parties received this notification on the same day.
- 220.** The administrative proceedings in the General Directorate of Labour ended when, at the request of the competent court, it was certified that the necessary procedures for characterizing the action as a strike had been completed; it would be for the court to decide whether the strike was lawful. Since only the parties to the dispute were notified of the court's ruling, the Government has no knowledge of it.
- 221.** With respect to recommendation (c), in which the Committee requested the Government to clarify whether union leader Guadalupe Atilio Jaimes Pérez (whose release was ordered by the judicial authority) is still facing charges and, if so, to inform it of the court ruling, the Government reproduces the ruling in question:

At 2.30 p.m. on 13 June 2011, in an initial hearing, the First Magistrates' Court of the Soyapango Integrated Judicial Centre issued judgment No. 1298-UDV-SOY-11, in which the court decided "(a) to move to the next (pre-trial) stage of these proceedings; and (b) to order the pre-trial detention of Guadalupe Atilio Jaimes Pérez, charged under article 154 of the Penal Code with threats of physical violence against José Heriberto Pacas, and, in lieu of pre-trial detention, that the accused shall: (i) appear before the First Magistrates' Court every 15 working days throughout the pre-trial stage of the proceedings; (ii) be prohibited from leaving the country without the authorization of the First Magistrates' Court; (iii) continue to reside at the same address; and (iv) not approach or communicate with the alleged victim;

(v) The request that a time limit be set for the pre-trial stage of the proceedings shall be referred to the First Magistrates' Court, which shall issue a ruling on the matter; (vi) the related civil proceedings shall be deemed to be brought at the request of the Public Prosecutor's Office; (c) the proceedings in the present case shall be referred to the First Magistrates' Court of this city pursuant to the last paragraph of article 300 of the Code of Criminal Procedure and the accused, who has been released, shall remain at liberty; and (d) the accused, Guadalupe Atilio Jaimes Pérez, shall follow the foregoing instructions".

222. Concerning the Committee's recommendation (d), requesting to be informed of the judicial ruling declaring the strike to be illegal, the Government states that, on 23 March 2012, the Fourth Labour Court of San Salvador heard the arguments for characterization of a strike against LIDO SA de CV made by union leader Guadalupe Atilio Jaimes Pérez in his capacity as General Secretary of the trade union SELSA. In a judgment issued on 12 April 2012, the court "(1) in order to settle the dispute pursuant to article 566, paragraph 3, of the Labour Code and, in accordance with articles 528, 546, 551 and 553(f) of the Code, declares that the strike called by Guadalupe Atilio Jaimes Pérez in his capacity as General Secretary of the LIDO SA de CV Company Trade Union is unlawful (Section 9, article 553(f), of the Labour Code) since, as demonstrated and determined by the aforementioned inspection, of the company's 321 workers, only 68 are striking peacefully while 253 remain on the job, 78 of them working for LIDO SA de CV and 175 working for FAMOLCAS SA de CV. Thus, the striking workers do not constitute at least 51 per cent of the employees of LIDO SA de CV or of the affected enterprise or establishment; (2) declares unfounded the request to stop work and orders all workers at the plant where the strike occurred to leave the premises peacefully; and (3) orders the striking workers to report for work at their usual time on 17 April of the present year in order to carry out their respective tasks".

223. With respect to the alleged dismissal of trade unionists Ana María Barrios Jiménez, María Isabel Oporto Jacinta and Oscar Armando Pineda (the Committee's recommendation (e)), the Government indicates that the records kept by the general labour inspectorate in the Ministry of Labour and Social Welfare have been reviewed and that no record of a request for a labour inspection by the persons in question has been found. It also states that the unfair dismissal of a member of a trade union's executive committee may be appealed not only through administrative channels, but also through the courts; thus, the claimants could have elected to initiate judicial proceedings. Therefore, according to the Government, the Committee should urge the claimants to provide additional information on the action taken so as to enable it to formulate the requested observations.

224. Concerning the Committee's recommendation (g), the Government provides a copy of the company's comments on the pending questions via the employers' organization concerned:

- (a) Owing to the death of the brother of its Director, Manuel Roberto Molina Martínez, the company was not functioning properly. Some workers were affected by this and reported alleged criminal offences. In order to address their complaints, Mr Molina Martínez, as a shareholder in the company, entered into conciliation proceedings with all the complainant workers in the Fifth Magistrates' Court and, out of his own pocket, reimbursed them for the unpaid amounts retained by the then administrators of DIGAPAN SA de CV.
- (b) It is true that LIDO SA de CV was bound by a three-year collective labour agreement with SELSA, registered with the National Department of Social Organizations in the Ministry of Labour and Social Welfare General Directorate of Labour in September 2008, which expired in September 2012. The trade union subsequently requested the Ministry to authorize a revision of the collective agreement – not one clause, as the complainants maintain – and since the temporary extension of the collective labour agreement was not effected as it had been agreed when requesting for revision, and in

order to keep the agreement in force during the revision pursuant to article 276, paragraph 2, of the Labour Code, it was decided that it would remain in provisional effect for the duration of the revision process. During this period, no understanding on a new agreement was reached since the trade union itself walked away from the bargaining table that it had demanded; it surprised the company by calling an unlawful strike, which was declared unlawful by the Fifth Labour Court of San Salvador in 2011 and the Fourth Labour Court of San Salvador in 2012.

- (c) Concerning the alleged anti-union activities, particularly with regard to Guadalupe Atilio Jaimes Pérez, the company states that it did not bring charges against him; he committed a crime by threatening and injuring another of the company's workers and it was the victim who complained to the authorities, who initially took Mr Jaimes Pérez into custody.
- (d) Concerning the union representatives' statement that the company was guilty of exerting undue influence on the Fourth Labour Court and that the court responded positively to such influences, this implies that the judge also committed an offence. The company therefore considers that, pursuant to article 232, paragraph 1, of the Code of Criminal Procedure, the matter should be referred to an examining magistrate and the signatories of the complaint should be asked to substantiate their claim or face charges of slander. Lastly, the company states that some trade union leaders have not reported for work since 22 July 2012 for no apparent reason or for frivolous reasons.

225. In conclusion, the Government states that, for the foregoing reasons, the complainant's allegations concerning the unlawful nature of the strike, the arrest of a trade union leader and the dismissal of workers' representatives are unfounded.

C. The Committee's conclusions

226. *The Committee notes that the allegations in the present case concern the period 2011–12.*

227. *Concerning the alleged anti-union attitude of LIDO SA de CV, the Committee observes that the Government confirms the allegation that, when the trade union requested the Ministry of Labour to authorize a revision of the collective agreement of 2 September 2011, the company refused to attend the direct negotiations or the conciliation meetings and did not respond to the trade union's request for compulsory arbitration; however, the Government notes that later, after the trade union had adopted a decision to call a strike and the union and the company had agreed (on 16 March 2012) to revise the collective agreement on a clause-by-clause basis and to meet again on 19 March 2012, the Ministry of Labour received a letter from the trade union reporting that a strike had broken out. The company, for its part, states that, by law, the collective agreement remained in force provisionally for the duration of the revision and that the trade union itself walked away from the bargaining table that it had demanded and called a strike, which the court declared unlawful. The complainants allege that the dialogue forum was established through the good offices of the Ministry of Labour, but the company argued economic problems, disputes between the owners and millions of dollars in debt in an attempt to justify freezing wages for the next six years. The Committee would like to point out that it is not called upon to evaluate the positions and strategies of the parties in a collective bargaining process and, in general, to draw attention to the principle that it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement: moreover, genuine and constructive negotiations are a necessary component to establish confidence between the parties [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 935]. It also underlines that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that every*

unjustified delay in the holding of negotiations should be avoided [see **Digest**, op. cit., para. 937].

- 228.** *With respect to the court's ruling that the strike was unlawful, the Committee notes the content of the 12 April 2012 judgment in which the Fourth Labour Court of San Salvador declared the strike unlawful, ordered all the workers present at the plant to peacefully leave the premises and the striking workers to report for work at their usual time on 17 April 2012.*
- 229.** *The Committee observes that the court ruled that the strike was unlawful because it noted that, of the company's 321 workers, only 68 were striking peacefully while 253 remained on the job, 78 of them working for LIDO SA de CV and 175 working for FAMOLCAS SA de CV. Therefore, the striking workers did not constitute at least 51 per cent of the employees of LIDO SA de CV or of the affected enterprise or establishment as required by law.*
- 230.** *The Committee observes a disparity in the numbers of striking workers provided by the complainant union; it maintains that 57 per cent of the company's workers supported the strike and that the subcontracted workers should not have been counted; it also alleges that the company exerted undue influence on the Fourth Labour Court, which included 14 company directors in its count.*
- 231.** *The Committee is not in a position to verify the irregularities alleged by the complainants, but would nevertheless recall the principle that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations [see **Digest**, op. cit., para. 547]. The Committee invites the Government to refer these legislative issues for tripartite dialogue.*
- 232.** *Concerning the criminal proceedings against Guadalupe Atilio Jaimes Pérez, General Secretary of the complainant trade union (whose release was ordered by the court), the Committee takes note of the company's statement that he committed a criminal offence against another of the company's workers, whom he threatened and injured, and that it was the victim who filed a complaint. The Committee also takes note of the judgment handed down on initial hearing by the First Magistrates' Court of the Soyapango Integrated Judicial Centre on 13 June 2011, in which the aforementioned union leader was charged under article 154 of the Criminal Code with threats of physical violence against José Heriberto Pacas, and, in lieu of pre-trial detention, was granted conditional release and is still at liberty.*
- 233.** *Concerning the allegation regarding the dismissal of trade unionists Ana María Barrios Jiménez, María Isabel Oporto Jacinta and Oscar Armando Pineda, the Committee notes from the Government's reply that the labour inspectorate's involvement was not requested and that the Government, being unaware whether judicial proceedings have been initiated, would like the complainants to provide additional information. Since the company states in general terms, without mentioning specific names, that some trade union leaders have not reported for work since 22 July 2012 for no apparent reason or for frivolous reasons, the Committee requests the complainants to indicate whether the three trade unionists that they mention by name have initiated legal proceedings and, if so, to inform it of the judgment in the case.*

The Committee's recommendations

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

- (a) The Committee recalls the principle that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations. The Committee invites the Government to refer these legislative issues for tripartite dialogue.*
- (b) The Committee requests the complainants to indicate whether the trade unionists Ana María Barrios Jiménez, María Isabel Oporto Jacinta and Oscar Armando Pineda have appealed their dismissals before the courts and, if so, to inform it of the judgment in the case.*

CASE NO. 2896

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

Complaint against the Government of El Salvador presented by

- **the Telecommunications Workers' Union (SITCOM) and**
- **the Workers' Trade Union Confederation of El Salvador (CSTS)**

Allegations: The complainant organizations allege numerous acts of anti-union discrimination by companies in the telecommunications sector, including manoeuvres to have a branch trade union dissolved, anti-union dismissals and the establishment of a company union controlled by the employer. The complainants also claim that several provisions of El Salvador's legislation on freedom of association need to be amended

235. The Committee examined this case at its March 2013 and June 2014 meetings. At the last of these, it presented an interim report [see 372nd Report, paras 174 to 183, approved by the Governing Body at its 321st Session (June 2014)].

236. Subsequently, the Government sent its observations in a communication dated 12 November 2014.

237. El Salvador 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

238. In its previous examination of the case in June 2014, the Committee made the following recommendations on the matters still pending [see 372nd Report, para. 183]:

...

- (b) The Committee again requests the Government to keep it informed of the implementation of the Committee's recommendations with regard to Case No. 1987, notably that the legislation be amended to remove the excessive formalities that apply to the establishment of trade union organizations and that trade union leaders, Luis Wilfredo Berrios and Gloria Mercedes González, be reinstated in their posts.
- (c) The Committee once again requests the Government to take the necessary steps to ensure that SITCOM's continued existence is not jeopardized for motives that run counter to the principles of freedom of association and to bring the principles concerning dual trade union membership to the attention of the Constitutional Chamber of the Supreme Court. The Committee expects that those principles will be taken into account by the Court and requests the Government to keep it informed of the corresponding ruling handed down. The Committee moreover urges the Government to take the necessary steps to amend section 204 of the Labour Code prohibiting dual union membership.
- (d) Regarding the suspension by the CTE of the deduction of union dues for workers affiliated to SITCOM, the Committee once again requests the Government to keep it informed of the outcome of the sanctions procedure that has been initiated and expects the sanctions imposed to be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in future in the company concerned.
- (e) Regarding the dismissal of trade union officials, Tania Gadalmaz and César Leonel Flores, the Committee once again requests the Government to keep it informed of developments in the sanctions procedure that has been initiated and expects the sanctions imposed to be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in future in the company concerned.
- (f) The Committee once again requests the Government to send it information without delay on the alleged discriminatory dismissal of five trade union officials at Construcciones y Servicios Integrales de Telecomunicaciones SA de CV, a subcontractor, and on the alleged anti-union dismissals at the Atento company.
- (g) The Committee again requests the Government to send it detailed information without delay on the request for a special inspection into the alleged domination of SINTRABATES by the employer, on the outcome of the corresponding court action brought by SITCOM and on the measures taken to amend the legislation as it relates to acts of interference to the detriment of trade unions.
- (h) The Committee once again requests the Government to provide it with information on the measures taken, including legislative measures, to provide union officials with effective protection in the event of anti-union discrimination.
- (i) The Committee once again invites the Government to consider, in consultation with the social partners, the review of section 622 of the Labour Code which provides that no appeal may be lodged against decisions handed down by a court of second instance.

B. The Government's reply

239. In its communication dated 12 November 2014, the Government indicates that, in relation to recommendation (b) in the previous examination of the case (the need to remove from legislation the excessive formalities for the establishment of trade union organizations), from 2009 to 2014 the number of registered trade unions has increased significantly from 243 active trade unions in the private sector in 2009, to 365 in September of the current year; in 2009 there were ten trade unions active in the public sector, compared to 90 in

September 2014. Consequently, the Government considers that the legislation in force has not hampered the registration process.

240. Within its area of competence, the Ministry of Labour and Social Security is promoting a policy of dialogue and outreach with all employers' and workers' organizations to enable all professional associations to present their concerns regarding the way in which the Ministry of Labour and Social Security processes their requests, specifically through meetings with various trade union organizations and accountability procedures. The Ministry has carried out various administrative changes in the National Department of Social Organizations with a view to expediting proceedings and claims filed by trade union organizations, addressing them in accordance with legislation.
241. The Government indicates that the establishment of a minimum number of members for the creation of a trade union (currently 35) seeks to avoid the existence of a large number of organizations within the same company or institution and that it does not consider this measure to violate freedom of association and the right to organize.
242. As regards the six-month delay before being able to present a new application for trade union registration, the Government indicates that the legislation is not restrictive. Internal administrative mechanisms have been established, including spaces for bilateral exchange with the founding members of the prospective trade union to provide them with guidance on meeting all the legal requirements. Among the public information circulated, this body indicates that if an application by a workers' organization is rejected following its failure to meet a requirement, it can present the relevant documentation on the following day under a new application for trade union registration.
243. Regarding the reinstatement in their posts of the trade union officials Mr Luis Wilfredo Berrios and Ms Gloria Mercedes González, the Government reports that the Ministry of Labour and Social Security is unable to carry out the relevant transactions because the institution ceased to exist when the National Telecommunications Authority (ANTEL), where the aforementioned union officials worked, was privatized under legislative decree No. 53 of 24 July 1997. However, investigations were carried out in the archives of the General Directorate for Labour Inspection of the Ministry of Labour and Social Security which did not find any communication from the parties concerned to the labour inspection authority of San Salvador regarding these union officials. As a result, it was not possible to verify their reinstatement due to alleged unfair dismissal.
244. As regards Committee recommendation (c) (measures to ensure that the Telecommunications Workers' Union's (SITCOM) existence is not jeopardized), the Government reports that general measures have been and will continue to be taken to ensure a guarantee of and compliance with trade union rights. The measures that are implemented include regular inspections to verify compliance with trade union rights and their effective protection, and to maintain the register of union members to guarantee its legal existence. Furthermore, note is taken of the request by the Committee and it will be informed in good time of any progress made or action taken with regard to the subject of dual trade union membership, which is before the Constitutional Chamber of the Supreme Court of Justice, and of any ruling issued in that regard.
245. As regards Committee recommendation (d) (the suspension of the deduction and the transfer of union dues), the Government indicates that, on 1 July 2011, a worker requested an inspection when the employer stopped applying the deduction of union dues for workers; the inspectorate determined that the employer had violated section 252 of the Labour Code by failing to apply the deduction of the corresponding union dues in respect of 84 workers who are members of the aforementioned trade union; this was followed by

another inspection which found that the reported violations had not been remedied, whereby the case entered the corresponding procedure for the imposition of sanctions.

- 246.** As regards Committee recommendation (e), the Government indicates that in the case of the dismissal of Ms Tania Verónica Gadalmes, the assistant general secretary of the SITCOM executive committee, on 4 January 2010, said union official indicated that she had been dismissed de facto (without the application of due process), and therefore unfairly, for carrying out her duties as the general secretary of the aforementioned trade union; in this regard a special inspection was carried out at the request of Ms Tania Gadalmes, in which the employer was notified that it should immediately reinstate the aforementioned worker and union official. However, the employer representatives indicated that they could not provide an answer until they had consulted their superiors. The inquiries also found that the wages accrued and unpaid over the period from 1 to 23 December 2009 had been settled with the official. Sanctions proceedings were initiated against the employer, which received a fine for the violation of section 29.2, for the other unpaid wages accrued for causes attributable to the employer, and section 248 of the Labour Code, for the de facto dismissal of the aforementioned union official.
- 247.** As regards Mr César Leonel Flores Aguilar, who is also a SITCOM union official, the employer paid him compensation and the worker signed the corresponding settlement, bringing an end to the employment relationship. It was therefore not possible to establish that there had been any kind of violation.
- 248.** As regards Committee recommendation (f), in particular with regard to the allegations of the discriminatory dismissal of five trade union officials working for the subcontractor Construcciones y Servicios Integrales de Telecomunicaciones SA de CV and at the company Atento El Salvador, the Government reports that the records kept for such cases by the General Directorate for Labour Inspection of the Ministry of Labour and Social Security, and specifically by the Special Unit for the Prevention of Discriminatory Labour Practices, contained administrative proceedings under reference No. 658-UD-11-12-E-SS, setting out the details relating to the unfair dismissal of David Alberto Martínez and José Guillermo Rodríguez, on the grounds of their membership of the SITCOM sectoral executive committee for the company Atento El Salvador, SA de CV. The allegations established that on 22 October 2012, the plant supervisor dismissed them unfairly, given their status as union officials and the absence of any procedure prior to their dismissal, violating section 47 of the Constitution, sections 248 and 226, paragraph 2 of the Labour Code, article 2 of ILO Convention No. 87 and article 1 of ILO Convention No. 98. The case is currently the subject of an appeal.
- 249.** The Government also requests the Committee to indicate the names of the three other union officials who were allegedly dismissed, given that only two of the five aforementioned union officials have been found in the records.
- 250.** As regards Committee recommendation (g) (alleged control of the Union of Workers of Atento El Salvador (SINTRABATES) by the employer), the Government reports that a special inspection was carried out as a result of the complaint submitted to the Special Unit for the Prevention of Discriminatory Labour Practices of the General Directorate for Labour Inspection of the Ministry of Labour and Social Security, on 28 March 2011. Among other things, this points to the promotion of an employer-controlled trade union with the acronym SINTRABATES; furthermore, administrative proceedings were filed under reference No. 77-UD-03-11-P-SS in view of the request submitted to the aforementioned Directorate on 9 March 2011 by SITCOM. The labour inspection report, dated 27 April 2011, found violations to section 30, prohibition 5 of the Labour Code, through discriminatory acts against workers on the grounds of their trade union membership where workers were asked to indicate, on the job application forms used by

the company, whether they were members of a union; section 29 obligation 5, through the mistreatment of workers by submitting them to polygraph tests; section 24 of the Act on Equal Opportunities for People with Disabilities, by not hiring persons with disabilities when the company was required to hire 35 persons with disabilities. The proceedings entered the procedure for the imposition of sanctions owing to the failure to remedy this last violation. The Government also reports that, having reviewed its compliance with the legal requirements and the procedure established by the Labour Code, the administrative authority recognized the legal personality of SINTRABATES in a ruling of 21 January 2011.

251. As regards Committee recommendation (h), the Government reports that the measures taken to provide union officials with effective protection in the event of anti-union discrimination are established in legislation, specifically under section 248 of the Labour Code which establishes the immunity to which all union officials are entitled in so far as they may not be dismissed, transferred or subject to a deterioration in their conditions of work. Accordingly, in cases in which the General Directorate for Labour Inspection of the Ministry of Labour and Social Security is notified of the dismissal of one of the members of the executive board of a professional association, it shall carry out an inspection in order to attempt to reinstate the person(s) dismissed. The Government indicates, however, that the following illegal practices have been identified to date and the Ministry of Labour and Social Security is examining ways to redress these:

- In cases where workers have been dismissed and the Ministry of Labour and Social Security intervenes to ensure their reinstatement, the workers are subsequently persuaded not to go to work and encouraged to draw their fortnightly or monthly wages on pay day, after which the employer alleges that the workers have abandoned their duties; they use evidence of their absences as grounds to file the corresponding legal proceedings for dismissal, without receiving settlement of the wages and other benefits to which they are entitled by law. These actions are being taken at a time of high demand for employment in which workers are being misled as a result of their need to hold on to their jobs;
- According to the same scenario, where the employer accepts the reinstatement of workers, on the following day it prevents them from returning to their functions at their place of work, and alleges before the courts that they abandoned their duties, or using any other bogus reasons to dismiss them, without paying them the wages and other benefits to which they are entitled by law. The Ministry therefore urges workers affected by this practice to present the corresponding complaint, and it warns both employers and workers to abstain from practices that undermine labour rights.

252. The Government indicates that it should recognize before the Committee that the judicial authorities are highly vulnerable to the interests of employers and that, while their legal appeals are subject to a certain level of scrutiny by the Ministry of Labour, it is not aware of the majority of the legal proceedings that are then filed by employers.

253. As regards Committee recommendation (i) (consultation with the social partners regarding the review of section 622 of the Labour Code which provides that no appeal may be lodged against decisions handed down by a court of second instance in relation to violations by trade unions), the Government reports that, for the time being, this matter has not been considered in the meetings of the Higher Labour Council. However, the Committee's request is noted for discussion at future meetings of the Council and the Committee will be kept informed of any progress made on that front.

C. The Committee's conclusions

- 254.** *The Committee recalls that the allegations in this case refer to numerous acts of anti-union discrimination by companies in the telecommunications sector in 2011 and 2012, including manoeuvres to bring about the dissolution of a branch trade union, anti-union dismissals and the establishment of a company union controlled by the employer, and that the complainants also claim that several provisions of El Salvador's legislation need to be amended to guarantee more effective protection of freedom of association.*
- 255.** *The Committee firstly wishes to indicate that it appreciates the positive and constructive attitude shown in the Government's reply concerning the recommendations made by the Committee, including those relating to certain legal provisions, and the administrative measures and mechanisms adopted to achieve better functioning of the National Department of Social Organizations to expedite administrative proceedings and establish a policy of dialogue and outreach towards workers' and employers' organizations. The Committee takes note of the statistics concerning the growth in the number of trade union organizations.*
- 256.** *As regards recommendations (b) and (c) in the previous examination of the case, the Committee recalls that an appeal by the complainant union (SITCOM) was pending before the Constitutional Chamber of the Supreme Court of Justice against a court decision (at the request of the company Compañía de Telecomunicaciones de El Salvador, SA de CV (CTE)), ordering the cancellation of SITCOM's registration on the basis of the dual membership of some of the members of this trade union, which is prohibited under section 204 of the Labour Code. The Committee notes that the Government indicates that it has taken measures to guarantee the legal existence of the complainant union (SITCOM) and that regular inspections are carried out to verify the company's compliance with union rights and their effective protection.*
- 257.** *The Committee notes that the Government indicates that it will report on the ruling handed down by the Constitutional Chamber of the Supreme Court of Justice and on its decision regarding the prohibition of dual union membership (to which the Committee had made objections in its previous examinations of the case). The Committee regrets the delay in the administration of justice and awaits the sentence and the information in question, while expressing the firm hope that the judicial authority will take its conclusions into consideration, highlighting the principle that workers should be able, if they so wish, to join trade unions at the branch level as well as the enterprise level at the same time [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 360; 367th Report, Case No. 2896 (El Salvador), para. 677].*
- 258.** *The Committee takes note of the Government's declarations regarding the minimum number of workers required in order to establish a trade union (35 according to legislation) and the requirement of a six-month delay before a new application for the award of legal personality to a trade union when a previous application has been rejected. The Committee notes that, according to the Government, the new practice adopted by the Ministry of Labour and Social Security consists in providing better guidance for the founding members of prospective trade unions and – where the application is rejected due to failure to meet the legal requirements – allowing trade unions to submit the necessary documentation for a new application to constitute a union on the following day. The Committee appreciates this new approach but invites the Government to submit this matter to the Higher Labour Council (a tripartite body), along with the important matter of reducing the minimum number of workers required to form a trade union, so that when the Labour Code is amended it is in line with the Ministry's practice.*

- 259.** *As regards the request for the reinstatement in their posts of union officials Mr Luis Wilfredo Berrios and Ms Gloria Mercedes González, the Committee notes that the Government indicates that it has found no communications from these persons in its records and that, as a result, the labour inspectorate was not able to verify their reinstatement following their alleged unfair dismissal. The Government also indicates that it does not have the authority to bring about reinstatements since the National Telecommunications Administration, where they worked, ceased to exist when it was privatized. The Committee requests the complainants to inform it of whether the officials Mr Luis Wilfredo Berrios and Ms Gloria Mercedes González filed an appeal against their dismissals and, if this is the case, to keep it informed of the outcome.*
- 260.** *As regards recommendation (d) in relation to the suspension of the deduction of the union dues of the workers who are members of SITCOM, the Committee takes note of the Government's statements that the labour inspectorate conducted an inspection of the company when it failed to carry out the deduction of the union dues of 84 union members, and that it found that the violation had not been remedied, whereby the case was subject to sanctions proceedings. The Committee requests the Government to ensure the company's compliance with the legal provision concerning the deduction of union dues (section 252 of the Labour Code) and to inform it of the outcome of the proceedings for the imposition of sanctions against the company and, as it indicated in its previous examination of the case, it firmly expects the sanctions imposed to be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in future.*
- 261.** *As regards recommendation (e), the Committee observes that the Government declares that, in relation to the dismissal of union official Mr César Leonel Flores Aguilar, the official received compensation from the company and that he signed the corresponding settlement with it, bringing an end to the employment relationship. As regards the sanctions proceedings in relation to the dismissal of union official Ms Tania Gadalmaz, the Committee notes that the Government reports that the case has been transferred to the sanctions stage. Considering that this union official was dismissed in January 2010, the Committee regrets the excessive delay in the administrative procedure for the imposition of sanctions, firmly expects that it will be concluded without delay, and requests the Government to keep it informed of the outcome. Furthermore, it reiterates the recommendation it made in its previous examination of the case that the sanctions imposed should be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in future.*
- 262.** *As regards recommendation (f), the Committee recalls that it requested the Government to send information without delay regarding the alleged discriminatory dismissals of five trade union officials by the subcontractor Construcciones y Servicios Integrales de Telecomunicaciones SA de CV, and the alleged anti-union dismissals by the company Atento El Salvador. The Committee notes that the Government's statements point to the illegal nature of the dismissal in October 2012 of the union officials David Alberto Martínez and José Guillermo Rodríguez and that the action for violation brought by the Labour Inspectorate was appealed by the company Atento El Salvador. The Committee also regrets the excessive delay in proceedings and requests the Government to communicate the outcome of the administrative appeal filed by the company.*
- 263.** *As regards recommendations (g), (h) and (i) (the allegation that the union SINTRABATES was set up by the employer), the Committee notes that, according to the Government's reply, the Ministry of Labour and Social Security granted SINTRABATES legal personality on 21 January 2011, having verified its compliance with the legal requirements, and that following the complaint filed by SITCOM, the Labour Inspectorate identified a series of anti-union practices – most of which are included in the Government's reply – which were remedied; accordingly, the company was only sanctioned for a matter which is unrelated*

to the exercise of union rights (the failure to hire persons with disabilities). The Committee wishes to recall that it had noted the proceedings filed by SITCOM concerning the alleged control that the employer exerts over the organization SINTRABATES. The Committee requests the Government to communicate the outcome of these proceedings.

- 264.** *The Committee had requested the Government to send information regarding the measures taken to review legislation on anti-union discrimination against union officials and observes that it indicates that the legislation in general protects union officials from dismissal (union immunity) and that the administrative authority carries out labour inspections in the event of dismissal to “attempt” to reinstate officials dismissed; the Government adds that it has identified illegal practices among employers which it describes in its reply and which it is trying to redress. The Committee highlights the seriousness of the practices described by the Government in its reply and of the fact that the Government recognizes also that the judicial authorities are highly vulnerable to the interests of employers. The Committee requests the Government to submit these matters to tripartite dialogue with the most representative organizations of workers and employers, including with regard to measures leading to amendments to legislation.*
- 265.** *The Committee notes that in relation to recommendation (i), the Government indicates that: (1) it has taken note of the Committee’s request regarding the need to review section 622 of the Labour Code (which provides that no appeal may be lodged against decisions relating to violations by trade unions of labour legislation handed down by a court of second instance) so that it may be taken into account at the meetings of the Higher Labour Council (a tripartite body); and (2) that it will keep the Committee informed.*
- 266.** *Observing that this case contains important legislative aspects which raise problems of consistency with the principles of freedom of association set out in the Constitution and the applicable ILO Conventions, the Committee requests the Government to submit all the legislative issues related to this case to the most representative workers’ and employers’ organizations, including the problems which the Government indicates are encountered in practice (minimum number of 35 workers for the creation of a trade union, the six-month delay before being able to present a new application for legal personality in respect of a trade union when a previous application has been rejected, prohibition of dual union membership, greater protection against acts of anti-union discrimination and interference, procedural delays, and lack of recourse against decisions handed down by a court of second instance where unions have violated labour law). The Committee also refers the legislative aspects of this case in light of the ratification of Conventions Nos 87 and 98 by El Salvador to the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee’s recommendations

- 267.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee appreciates the constructive attitude shown in the Government’s reply and the measures taken to promote the exercise of union rights.*
 - (b) The Committee awaits the ruling on the appeal presented before the Supreme Court of Justice by the complainant union, SITCOM, against the court decision ordering the cancellation of its registration as well as information from the Government regarding the legal prohibition of dual union membership which will be examined in that ruling, and invites the*

Supreme Court of Justice to take into consideration its conclusions regarding the legitimacy of dual union membership.

- (c) The Committee requests the complainants to inform it of whether the union officials Mr Luis Wilfredo Berrios and Ms Gloria Mercedes González filed an appeal against their dismissal and, if this is the case, to keep it informed of the outcome.*
- (d) The Committee requests the Government to ensure the company's compliance with the legal provision concerning the deduction of union dues (section 252 of the Labour Code) and to inform it of the outcome of the procedure for the imposition of sanctions against the company. As indicated in its previous examination of the case, the Committee firmly expects the sanctions imposed to be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in the future.*
- (e) The Committee regrets the excessive delay in the administrative procedure for the imposition of sanctions for the dismissal of union official Ms Tania Gadalmaz, firmly expects that it will be concluded without delay and requests the Government to keep it informed of its outcome while it reiterates its recommendation in its previous examination of the case that the sanctions imposed should be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in the future.*
- (f) The Committee regrets the excessive delay in the proceedings relating to the sanctions against the company Atento El Salvador for the dismissal of the union officials David Alberto Martínez and José Guillermo Rodríguez and requests the Government to inform it of the outcome of the administrative appeal filed by the company against the sanctions.*
- (g) The Committee requests the Government to keep it informed of the legal proceedings filed by the complainant union (SITCOM) against the decision of the Ministry of Labour and Social Security to grant legal personality to the union SINTRABATES, which the complainant union claims is under the control of the employer.*
- (h) Observing that this case contains important legislative aspects which raise problems of consistency with the principles of freedom of association as set out in the ILO Constitution and applicable ILO Conventions, the Committee requests the Government to submit all the legislative problems mentioned in this case, including the problems which the Government indicates are encountered in practice, to tripartite dialogue with the most representative workers' and employers' organizations.*

CASE NO. 2923

INTERIM REPORT

**Complaint against the Government of El Salvador
presented by**

- **the Union of Municipal Workers of Santa Ana (SITRAMSA) and**
- **the Autonomous Confederation of Salvadorian Workers (CATS)**

Allegation: Murder of a trade union leader

- 268.** The Committee last examined this case at its May–June 2014 meeting, when it presented an interim report to the Governing Body [See 372nd Report, paras 184 to 193, approved by the Governing Body at its 321st Session (June 2014)].
- 269.** The Government sent new observations in communications dated 11 June 2014 and 27 February 2015.
- 270.** El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers’ Representatives Convention, 1971 (No. 135) and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. Previous examination of the case

- 271.** In its previous examination of the case in May–June 2014, the Committee made the following recommendations [see 372nd Report, para. 193]:
- The Committee, deeply deploring and condemning the murder of union leader Mr Victoriano Abel Vega, once again requests the Government to provide information on the criminal proceedings initiated and to take all measures at its disposal to ensure that investigations are intensified to clarify the facts, identify the guilty parties and impose severe punishment upon them, with a view to preventing such types of criminal offences.
 - Furthermore, as the complainant organizations have linked the murder of the union leader to his union activities, and in particular to his advocacy for the establishment of a union in the municipal services of San Sebastián (allegedly impeded by the dismissal of the union’s founding members and the silence of the labour administration concerning the trade union complaints), the Committee once again requests the Government to send its observations on the matter and to ensure that the workers in question are able to establish a trade union without restriction.
 - Lastly, the Committee once again draws the Governing Body’s attention to the extremely serious and urgent nature of this case.

B. The Government’s reply

- 272.** In its communication dated 11 June 2014, the Government indicates that it is transmitting the information available regarding the murder of the trade union leader Mr Victoriano Abel Vega in the city of Santa Ana in January 2010. The Government adds that, having carried out consultations regarding this case, a note was submitted by the Office of the Public Prosecutor, dated 17 March 2014, indicating that the corresponding inquiries are being carried out to identify the perpetrators of, or other parties to, the act, whereby it is currently being treated as an “active investigation”. According to the aforementioned note, the case file contains the report of the removal of the corpse, the autopsy, the photographs

and sketch of the crime scene, and witness interviews, which do not reveal the identity of any of the perpetrators. The note also indicates that this case has been reassigned to investigators in the Central Investigation Department of San Salvador, who are conducting investigations to find sources which could provide the information needed to identify the perpetrators of, or other parties to, the act.

273. In its communication dated 27 February 2015, the Government states that the Ministry of Labour and Social Security has contacted the Office of the Public Prosecutor, and in particular the Special Unit for Crimes against Life of the Office of the Public Prosecutor of Santa Ana, which was the body to which the case was referred under Reference No. 116-UDVA-10, for the investigation of the murder of Mr Victoriano Abel Vega. This body initially abstained from making any declaration, being under the legal obligation not to disclose any details relating to the case in accordance with the Code of Criminal Procedure, which only grants access to the case to the parties; as of September 2014 it had not been possible to identify the perpetrator or perpetrators.
274. In spite of the information set out above, the Ministry of Labour and Social Security continues its monitoring and coordination work in order to demonstrate the importance of ensuring that freedom of association is respected and guaranteed by the Government. In its last communication, the Office of the Public Prosecutor indicated that it had all the documentation needed to establish the existence of a criminal offence. The Government reiterates that the investigation has been reassigned to the Central Investigation Department of San Salvador, which will continue to search for sources which could provide the information needed to identify the perpetrators of, or other parties to, the act. The Government adds that the case continues to be treated as an active investigation and that the Government will, accordingly, continue to provide information regarding any developments in this case.
275. As regards the Committee's second-to-last recommendation and the complainants' allegation that the murder took place when the municipal services of San Sebastián had impeded the creation of trade unions, the Government indicates that the allegation is unsubstantiated given that, according to the records of the National Department of Social Organizations, the creation of the Union of Municipal Workers of San Sebastián Salitrillo was registered on 18 November 2010, and to date the members of the executive committee continue to hold valid credentials.

The Committee's conclusions

276. *The Committee recalls that the allegations in the present case refer to the murder, on 16 January 2010, in the city of Santa Ana, of Mr Victoriano Abel Vega (Secretary-General of the Union of Municipal Workers of Santa Ana (SITRAMSA)). He died from multiple gunshot wounds as he was leaving the City Sanitation Services office, where he had gone to submit a letter requesting permission to attend a union meeting of the Autonomous Confederation of Salvadorian Workers (CATS). The complainant organizations highlighted that, upon leaving the office, Mr Victoriano Abel Vega, who had already received death threats for his union activities, was killed by five persons who were waiting for him, and who drove away in a vehicle that was waiting for them. In its last examination of the case, the Committee took note of the Government's statement to the effect that criminal proceedings had been initiated for murder.*
277. *The Committee takes note of the Government's additional observations, according to which: (1) initially, in accordance with the requirements of the Criminal Code of Procedure in cases of murder, the Office of the Public Prosecutor was not authorized to provide details in relation to the case of the murder of the trade union leader Mr Victoriano Abel Vega (to which only the parties were given access) and that as of*

September 2014 it had not yet been possible to identify the perpetrator or perpetrators; and (2) the Office of the Public Prosecutor continues to treat this case as an active investigation and the Central Investigation Department continues searching for sources to enable it to identify the perpetrators of the crime.

- 278.** *The Committee deeply regrets that, although the murder of trade union leader Mr Victoriano Abel Vega took place on 16 January 2010, almost five and a half years later the authorities have not identified the perpetrators of, or parties to, this abject murder. The Committee regrets to note that, with regard to its request in its previous examinations of the case that investigations be intensified, the Government does not indicate all available measures under applicable laws taken to intensify investigations and only reports that the Office of the Public Prosecutor continues to treat this case as an active investigation. The Committee requests the Government and all the competent authorities to take all available measures in accordance with the law to identify the perpetrators of the murder.*
- 279.** *The Committee again highlights the seriousness of the allegations, deeply deplores and condemns the murder of the trade union leader and regrets that the Government's reply does not indicate that it has mobilized all the means and resources required to clarify this case, despite its extremely serious and urgent nature, which was specifically drawn to the attention of the Governing Body, and it therefore reiterates the recommendation made at its June 2014 meeting. The Committee again requests the Government to provide information on the criminal proceedings initiated and to take all measures at its disposal to ensure that investigations are intensified to clarify the facts, identify the guilty parties and impose in accordance with the law, commensurate punishment, with a view to preventing such types of criminal offences.*
- 280.** *As regards the Committee's recommendation in relation to the fact that the complainant organizations have linked the murder of the union leader to his union activities, and in particular to his advocacy for the establishment of a union in the municipal services of San Sebastián (allegedly impeded through dismissals of the union's founding members and the silence of the labour administration concerning the trade union complaints), the Committee had requested the Government to send its observations on the matter and to ensure that the workers in question are able to establish a trade union without restriction. The Committee takes note of the Government's statement in its reply that these allegations are unfounded given that SITRAMSA was created on 18 November 2010 and that its executive committee members' credentials are still valid.*
- 281.** *In this regard, the Committee wishes to highlight that the murder of the trade union leader Mr Victoriano Abel Vega took place on 16 January 2010 and that the complainants link this murder with the activities taken to promote the trade union long before that. The Committee requests the Government to ensure that the criminal investigations go into sufficient depth with regard to the declarations of the complainants concerning the anti-union motives for the murder. Likewise, the Committee urges the Government to carry out an inquiry into the alleged dismissals of the founding members of the union of municipal workers and the alleged silence of the labour administration concerning the trade union complaints and to keep it informed in this regard.*

The Committee's recommendations

- 282.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee, deeply deploring and condemning the murder of union leader Mr Victoriano Abel Vega, once again requests the Government to*

provide information on the criminal proceedings initiated and to take all measures at its disposal to ensure that investigations are intensified to clarify the facts, identify the guilty parties and impose commensurate punishment in accordance with the law, with a view to preventing such types of criminal offences. The Committee requests the Government and the competent authorities to take all available measures in accordance with the law to identify the perpetrators of this murder and to investigate further into its alleged anti-union motives.

- (b) In this connection, as the complainant organizations have linked the murder of the union leader to his union activities, and in particular to his advocacy for the establishment of a union in the municipal services of San Sebastián (allegedly impeded through dismissals of the union's founding members and the silence of the labour administration concerning the trade union complaints), the Committee urges the Government to carry out an investigation in this regard and to keep it informed.*
- (c) Lastly, the Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.*

CASE NO. 3054

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

Complaint against the Government of El Salvador presented by

- the General Confederation of Trade Unions (CGS)
- the Trade Union Council of El Salvador (CONSISAL)
- the Central American Workers' Confederation (COCA)
- the United Confederation of Salvadorian Workers (CUTS)
- the National Confederation of Salvadorian Workers (CNTS) and
- various trade union federations

Allegations: Interference by the authorities in the appointment of worker members of the Higher Labour Council, and this body's failure to function since 2013

283. The complaint is contained in a communication dated 21 November 2013 presented jointly by the General Confederation of Trade Unions (CGS), the Trade Union Council of El Salvador (CONSISAL), the Central American Workers' Confederation (COCA), the United Confederation of Salvadorian Workers (CUTS), the National Confederation of Salvadorian Workers (CNTS), and 26 trade union federations. These organizations presented additional information and new allegations in a communication dated 19 May 2014.

284. The Government sent new observations in a communication dated 28 October 2014.

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

A. The complainants' allegations

- 286.** In their letter dated 21 November 2013, the CGS, CONSISAL, the Trade Union Federation of Agricultural and Commercial Workers (FESTRAC), the Workers' Trade Union Federation of El Salvador (FESTRAES), the Trade Union Federation of Integrated Democratic Salvadorian Workers (FESTRAIS), the Trade Union Federation of Miscellaneous Workers (FESTRAD), COCA, the Federation of Construction, Transport and Allied Industry Trade Unions (FESINCONSTRANS), the Salvadorian Christian Campesino Federation (FECCAS), the Federation of United Industrial Associations (FAPU), the Federation of Independent Trade Unions in Transport, Trade and Export Processing (FLATICOM), the Independent Vendors' Trade Union Federation of El Salvador (FESTIVES), the Industrial and Service Workers' Trade Union Federation (FESITRISEVA), the Revolutionary Trade Union Federation (FSR), the Federation of Textile and Allied Industry Trade Unions (FESINTEXSICA), the Federation of Industrial Associations of Salvadorian Workers (FAPTRAS), the Federation of Unionized Salvadorian Workers (FETRASS), the Federation of Workers (FGT), CUTS, the CNTS, the Autonomous Central Labour Federation (F-CLAT), the United Federation of Salvadorian Campesino Workers (FUOCA), the Independent Workers' Trade Union Federation of El Salvador (FSTIES), the Trade Union Federation of the Salvadorian Workers' Movement (FSMTS), the Autonomous Trade Union Federation of Salvadorian Workers (FSATRAS), the Democratic Workers' Trade Union Federation of El Salvador (FSTD), the National Trade Union Federation of Salvadorian Workers (FENASTRAS), the General Union Federation of Salvadorian Workers (FUGTS), the Independent Commercial Workers' Trade Union Federation of El Salvador (FESTICES), the Trade Union Federation of Salvadorian Workers (FSTS), and the United Trade Union Federation of El Salvador (FUSS), allege violations of freedom of association and acts of interference by the public authorities of the Government of El Salvador, specifically by the Minister of Labour and Social Welfare in interfering with and obstructing the appointment of worker representatives to the Higher Labour Council (CST), thereby infringing ILO Conventions Nos 87 and 98 as ratified by El Salvador.
- 287.** The complainants indicate that in February 2013 the term of office of the worker representatives to the CST was coming to an end. Hence, on 16 February, a formal request was sent in writing to the Minister of Labour and Social Welfare and ex officio president of the CST to issue the relevant call for nominations, in accordance with the CST rules of procedure. No reply was received to this request.
- 288.** In view of this situation, the trade union organizations, by a note dated 16 May 2013, sent a second request in writing for the call for nominations to be issued.
- 289.** The representatives of the legally registered and constituted federations and confederations, meeting on 20 May 2013, appointed their representatives (titular and alternate) to the CST, at the same time appointing the adviser for their sector and their representatives on its executive committee, in accordance with section 4(c) of the CST rules of procedure, which provides as follows: "The worker members shall be appointed by the trade union federations and confederations registered at the Ministry of Labour and Social Welfare. Their appointment will be communicated to the Ministry of Labour and Social Welfare."

- 290.** On 21 May 2013, the federations and confederations duly registered at the Ministry informed the Minister of Labour and Social Welfare of the appointment of the worker representatives so that they could be sworn into their posts and commence their duties.
- 291.** In fact the Minister of Labour and Social Welfare and ex officio CST president failed to swear in the appointed persons as prescribed by law for the sector. On the contrary, he held meetings with trade union officials who shared his party-political ideology, further to which, by a decision of 23 May 2013, he instructed the legally registered federations and confederations, using administrative formalism, that communication had to be effected by the federations and confederations participating in the appointment of representatives, and not by the worker representatives on the CST, giving a deadline of 48 hours to comply with that instruction.
- 292.** A total of 42 out of the 46 legally registered federations and confederations complied with the abovementioned requirement and, on 27 May 2013, within the deadline specified in the abovementioned decision, they sent the Minister of Labour and Social Welfare two lists of worker representatives comprising 16 members (titular and alternate), each one having the support of the corresponding federations and confederations, as shown in the communication in question. It is crucial to mention here that 46 trade union organizations (federations and confederations) are duly registered at the Ministry of Labour and Social Welfare, four of which did not participate in the appointment of representatives, as one of these organizations is without a leader or executive committee, nor does it have judicial or extra-judicial representation to manage its normal operations, and the other three organizations abstained from participating in the process.
- 293.** As a result of the above, only 42 trade union organizations (federations and confederations) participated in the appointment of worker representatives.
- 294.** As a result of the call for nominations and election in question, one of the submitted lists was approved by 33 federations and confederations, which voted for the same 16 representatives (titular and alternate) for the CST. This represents 78.6 per cent of all accredited organizations that took part in the appointments.
- 295.** Despite the existence of a list accounting for the majority of appointments, on the basis of the election referred to in the previous paragraph, the Minister of Labour and Social Welfare held a series of meetings to “give continuity to the procedure for the appointment of worker members to the Higher Labour Council”, in relation to which he issued the call for nominations dated 12 June 2013.
- 296.** Having failed to achieve his objective in the abovementioned meetings, the Minister of Labour and Social Welfare issued a decision dated 2 July 2013, which was notified on 26 July, in which, on the basis of subjective criteria not previously established in the applicable laws and regulations, he did not recognize the appointment of the representatives on the list that obtained the majority of votes and urged the legally registered federations and confederations to reach an agreement as soon as possible and send the Ministry a single list of nominations for the representation of the workers on the CST, the number of representatives to be determined by the CST rules of procedure. The complainants construe this as further obstruction by the Government of the work of the CST aimed at achieving the undemocratic appointment of representatives who share its party-political ideology.
- 297.** With this decision, the Minister of Labour and Social Welfare has not only breached the laws of the country but, blatantly interfering in the decision-making of trade union organizations and thereby violating Article 3 of ILO Convention No. 87, ratified by El Salvador, has based his action on a subjective interpretation of the CST rules of

procedure which disregards the fact that, under section 207 of the Labour Code, the organizations are governed by the “democratic principle of the prevalence of majorities”. Even though it is true that section 4 of the CST rules of procedure does not lay down a specific procedure, section 207 of the Labour Code provides that “trade unions may not grant privileges or advantages to any of their members. They shall be governed without exception by the democratic principles of the prevalence of majorities and ‘one person, one vote’ ...”. This provision, in conjunction with section 263 of the Labour Code, establishes that the provisions concerning trade unions are applicable to federations and confederations. In other words, the Minister cannot require or urge the workers to submit a single list.

- 298.** The complainants emphasize that their complaint holds even more weight if account is taken of the fact that it had been agreed to hold a plenary session of the CST on 31 July 2013, the agenda for which had included examination of the recommendations made in Case No. 2980 of the Committee on Freedom of Association (a case presented by the employers’ organization), with a view to reaching mutual agreement on ensuring a balanced tripartite composition of the management boards of autonomous institutions, with workers’ and employers’ representatives on tripartite bodies being freely appointed by the organizations.
- 299.** The complainants emphasize that the CST’s inability to function has major consequences for labour legislation and policies, since tripartite consultations are prevented with respect to the discussions concerning the Voluntary Retirement Benefit Bill, the draft Code of Labour Procedure, the Labour and Social Welfare Bill, the draft amendments to the implementing regulations for the Occupational Risk Prevention Act, and the draft amendments to section 198 of the Labour Code (concerning bonus payments).
- 300.** It is clear that the proposal contained in the 2 July 2013 decision of the Minister of Labour has continued to prevent the CST from being properly constituted, this being the body that has the task of discussing the abovementioned draft legislation and the recommendations of the Committee on Freedom of Association made in Case No. 2980.
- 301.** According to the complainants, the Government continues to violate Conventions Nos 87 and 98, in particular the right to elect representatives of the workers and their organizations without interference from the public authorities, even disregarding the fact that the elected representatives had obtained 78.6 per cent of the total votes of the federations and confederations.
- 302.** In their communication of 23 May 2015, the complainants allege that the items of draft legislation referred to in their previous communication (except the draft Labour Code of Procedure) were discussed and adopted by the Legislative Assembly without prior tripartite consultation and without the CST being able to express its views, despite being mandated to institutionalize social dialogue and promote economic and social cooperation.
- 303.** Lastly, the complainants allege that the Minister of Labour and Social Welfare stated publicly that he was in the process of formulating and revising rules concerning the election of worker representatives in the various institutions that have tripartite bodies, with a view to establishing the terms and conditions for the election of trade union representatives to such institutions. The complainants insist that these statements are further evidence of the Minister’s intention to continue his arbitrary and legally unfounded involvement in the free appointment of representatives of the workers’ organizations, thereby explicitly violating the terms of Article 3 of ILO Convention No. 87.

- 304.** The purpose of this interference is to prevent the various proposals for reform of the labour legislation from being the subject of due tripartite discussion, on account of the standstill with respect to the CST.

B. The Government's reply

- 305.** In its communication of 28 October 2014, the Government indicates that, with regard to the reference made by the complainant organizations to the workers' request to issue the call for nominations of worker representatives on the CST, the Ministry of Labour and Social Welfare responded on 20 May 2013 to the request from the former worker representatives by publishing a public notice in a leading national newspaper, calling on the trade union federations and confederations registered with the National Department for Labour Organizations at the aforementioned Ministry to submit in writing the names of the persons to be considered as titular and alternate candidates for membership of the CST. As a result of this call for nominations, 28 proposals were received between 27 and 30 May 2013 supporting three lists of nominees, two of which contained 16 persons each and one of which contained two independent candidates, resulting in a total of 34 nominees. This demonstrates that the Minister, as ex officio president of the CST, met the workers' request.
- 306.** Furthermore, the complainants indicate that they communicated two lists of representatives comprising 16 members (titular and alternate), but that the nominees could not be sworn in on account of there being 34 worker representative proposals instead of the 16 nominations required under section 4 of the CST rules of procedure. In view of the large number of nominations and considering the grounds which had been cited for the nomination of worker representatives, the representatives were asked to make their nominations in accordance with the law and were given 48 working hours to do so. This situation was addressed through the individual presentation by the federations and confederations of the endorsed candidates.
- 307.** Nevertheless, the Trade Union Confederation of Salvadorian Workers (CSTS), the Workers' Unity Federation of El Salvador (FUERSA), the Federation of Public and Autonomous Institution Unions of El Salvador (FESIPAES), the Workers' Unity Confederation of El Salvador (CONFUERSA), the Federation of Independent Associations and Trade Unions of El Salvador (FEASIES), the Trade Union Federation of Food, Beverage, Hotel, Restaurant and Agro-Industry Workers of El Salvador (FESTSSABHRA), the Federation of Public Sector Workers' Unions (FESITRASEP), the Trade Union Federation of Municipal Workers of El Salvador (FESITRAM) and the Trade Union Federation of El Salvador (FESS), submitted various different lists of nominations making it clear that there was no unanimity in the nominations made by the representatives.
- 308.** Accordingly, in the absence of appropriate nominations, a first meeting was held on 6 June 2013 with the representatives of the professional associations which had submitted candidates (31 federations and six confederations) with a view to making the election process more transparent and bringing about a rapprochement between the various federations and confederations in order to reach a joint agreement. In spite of this, two blocs formed at the meeting of 11 June 2013, each supporting a separate list of 16 elected representatives. With no single list chosen, the only agreement reached was as follows: "After two hours of discussion, during which the representatives of the federations and confederations present failed to reach an agreement regarding the nominations, the Minister of Labour issued an official invitation to another meeting at the Vocational Training Centre of the Ministry of Labour and Social Welfare on 18 June 2013."

- 309.** In the wake of this meeting and given the lack of consensus, the trade union associations were invited on 12 June 2013 to another meeting, which was held on 18 June 2013 and was attended by 37 federations and eight confederations, some participating without having submitted candidate proposals. This meeting resulted in the following agreement: “The representatives of the federations and confederations here present did not reach an agreement regarding nominations, some considering that the nominees on the list with the greatest number of votes should be sworn in.” This demonstrates the willingness of the Ministry of Labour and Social Welfare to create forums for dialogue to enable the workers to reach an agreement on the nominations of the members who would represent them on the CST, despite their inflexibility and lack of willingness to achieve a positive outcome in the election process.
- 310.** Nevertheless, it is important to note that an invitation was issued on 4 July 2013 to a meeting of the CST executive committee and, since the workers had not yet elected any representatives, those who had previously acted as worker representatives (members who had finished their two-year term of office in March 2013) were asked to attend. At that meeting, the worker representatives called on the then Minister of Labour and Social Welfare to swear in the nominees on one of the lists that they had submitted, claiming that this list best represented the interests of the workers as a whole. In response to this demand, the adviser of the CST employers’ group also supported the representatives’ choice of one of the lists submitted, whereby those who had previously represented the workers would continue to perform that function.
- 311.** It should be noted that the nominations submitted by the trade union federations and confederations were concerned with the representation of a total of 172,304 people who, according to the information provided by the various trade union associations, had been union members up to that date. It would therefore seem clear that representativeness is directly proportional to membership numbers and that, accordingly, the larger the number of people registered with the federations that endorse a nomination, the greater the representativeness of the candidate for a seat on the CST. Accordingly, it can be assumed that the appointment of candidates to the aforementioned body should be carried out in accordance with procedures that ensure the democratic participation of the union members. Here it should be reiterated that any selection process should have the consent of all the parties involved to avoid creating a precedent of arbitrarily adopting decisions that lack legitimacy as a result of the de facto exclusion of legitimate parties.
- 312.** Consequently, it should be stressed that if the Ministry had opted for the list submitted by one of the trade union federation or confederation groups, despite the clear opposition of the other group and with a possible disregard for the procedure previously established and approved by all the parties, it would imply that the State was setting itself up as the authority empowered to appoint and remove members of the CST, which runs counter to the provisions of the current legislation of El Salvador.
- 313.** Contrary to the claims made in the complaint, this public administration did not demand a unanimous agreement regarding the nominations to the CST but rather that the procedure for such nominations should have the legitimacy which can only be granted by the sector as a whole, which is not the case here. It should be stressed that at no point has this Ministry refused to recognize the appointment or swearing in of worker representatives, since it is not authorized to interfere in a process which is the exclusive purview of workers and the organizations that represent their interests. Accordingly, in view of safeguarding the interests of the workers in matters under discussion in the CST, a communication dated 2 July 2013 urged the legally registered federations and confederations to reach an agreement and communicate it to the Ministry of Labour and Social Welfare, involving a single proposal indicating the names of the persons who would

be appointed to the CST, with a total of eight titular and eight alternate members. This also failed to yield a positive outcome as the workers did not comply with the request.

- 314.** However, the above situation and the current lack of worker representatives on the CST have not signified any obstacle to the holding of tripartite consultations in compliance with the ILO Conventions, in particular the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), since the 2013–14 reports submitted to the ILO on the application of ILO Conventions ratified by the country were sent in September 2014 for consultation to all the federations and confederations legally registered at that time with the National Department for Labour Organizations. It should not therefore be assumed that the failure to swear in worker representatives totally prevented the relevant tripartite consultations from being conducted.
- 315.** This demonstrates that the regulations governing the nomination of members of the CST have been respected at all times and that each of the steps taken by the Ministry of Labour to facilitate the process has been documented, particularly in view of the fact that having a national tripartite body that includes members from representative, independent and democratic workers' organizations is essential in order to give the latter a forum in which to formalize their mission to effectively defend and protect the interests and rights of the country's working class, through dialogue and economic and social cooperation as assigned by law to this tripartite body.
- 316.** It is also important to note that one of the main concerns of the Government of El Salvador has been the promotion of dialogue with all national sectors, and that various forums for dialogue on strategic decisions are being established, in relation to matters such as the Government Five-Year Plan 2014–19 and investment for the promotion of employment. This establishes a culture of promoting and exercising rights as a priority and focus for the public service, alongside access to information and transparency.
- 317.** Further evidence of its wish to contribute to a way out of the impasse surrounding the workers' incapacity to operate within the CST is that the Ministry of Labour and Social Welfare, under the auspices of its Minister, has held ten meetings since June 2014 with various federations and confederations in order to raise awareness of the importance of resolving this problem. These bodies include: the CGS, CONSISAL, COCA, the CSTS, CONFUERSA, FETRASS, FESINCONSTRANS, FESTRAES, FESITRASEP and FEASIES.
- 318.** These meetings were intended as forums in which to reach agreements on a solution involving the creation of an alternative mechanism, since the previous mechanisms had failed to produce favourable effects and results or enable the CST to be constituted. It cannot therefore be claimed that El Salvador has violated ILO Conventions Nos 87 and 98, concerning freedom of association and the right to organize, because the constitutional reforms of articles 47 and 48 of the Constitution also incorporated public-sector trade union federations and confederations in the process to appoint worker representatives to the CST for the 2013–15 period.
- 319.** Regarding the complainants' allegations concerning the alleged violations of trade union rights and acts of interference by the public authorities, the Government indicates that:

 - As regards the fact that the Voluntary Retirement Benefit Act and the amendments to section 198 of the Labour Code were adopted without complying with the tripartite consultation procedure established under ILO Convention No. 144 since the CST could not convene, the Committee is informed that on this occasion it was indeed not possible to carry out consultations given that, as of 1 March 2013, the lack of worker representation prevented the CST from meeting, despite all the steps taken by the

Ministry of Labour to bring the situation to a satisfactory resolution. Although these reforms were not submitted to consultation, they do not imply a setback for, or a deterioration of, labour rights in national legislation. On the contrary, to avoid complex decisions such as those taken by previous governments regarding retirement procedures, this provides regulations governing voluntary, non-compulsory retirement and caters for workers who so wish to opt for retirement with the possibility of economic compensation and benefits in accordance with the law.

- As regards the reform of the Labour Structure and Functions Act, through the Labour and Social Welfare Bill, on which substantive observations were made but were not attached to the preliminary draft presented to the Legislative Assembly, the Committee is informed that tripartite consultations in that regard were carried out through three public consultation workshops on 15 November 2012, 4 December 2012 and 25 January 2013 with the participation of representatives of the three national sectors (workers, employers and Government). However, whether or not to analyse the inputs from the consultations with employers' and workers' organizations not represented in the CST and whether or not to include the observations made by each of the sectors in relation to the abovementioned Bill was a decision solely for the labour subcommittee created by the CST under the agreement contained in Act No. 30 of 27 September 2012 concerning the revision of the preliminary draft of the Labour and Social Welfare Bill, which is currently under discussion before the Legislative Assembly.
- As regards the CST's incapacity to examine the draft Code of Labour Procedure, it should be noted that the Ministry did not overstep its competence in this regard, given that the process was carried out by the Supreme Court of Justice and resulted in the presentation of the draft Code of Labour Procedure to the Legislative Assembly on 3 September 2013, as part of its remit under the Constitution of the Republic. The aforementioned preliminary draft Code of Labour Procedure is currently under examination by the Labour Committee of the Legislative Assembly, and the Committee on Freedom of Association will be notified of any progress as soon as the information becomes available. Regarding both preliminary drafts that are currently under legislative analysis and debate, coordination is undertaken between the Ministry of Labour and this body and, in this way, irrespective of whether or not the CST is constituted, consultations will be carried out with both employers and workers.
- With regard to the drafting and reform of rules of procedure governing the election of worker representatives within various tripartite institutions, there is no current reform process. Consequently, the claim to that effect in the complaint is incorrect.

320. Lastly, the Government reiterates that in order to be able to swear in the new members of the CST, the submission of a single list of nominations, resulting from a consultation procedure that is recognized by all the parties involved, is essential given that if the public administration were to arbitrarily accept one list over another, it would imply disregarding and trampling on the rights of the associations whose lists were rejected. Hence, the responsibility for settling this dispute lies with the trade union federations and confederations of El Salvador, not with the Government or the employers. This dispute falls outside the competence of this Ministry, which does not mean, however, that it will not take action to promote dialogue and contribute to the reactivation of the CST, avoiding any violation of article 86 of the Constitution of the Republic by requiring public servants to refrain from taking any measures not explicitly permitted by law.

C. The Committee's conclusions

- 321.** *The Committee observes that in the present case the complainant confederations and federations allege that, since 2013, the Government, in particular the Minister of Labour and Social Welfare, has been obstructing and interfering in the appointment of worker representatives to the CST, a tripartite body for consultation and economic and social cooperation in relation to labour matters, including draft legislation in this field, and that this has prevented a number of items of labour legislation being the subject of tripartite consultation prior to processing and adoption by the Legislative Assembly.*
- 322.** *The Committee notes that, according to the allegations: the purpose of the abovementioned action is to hamper the work of the CST and promote the appointment of worker representatives to the CST who share the Minister of Labour's party-political ideology; hence the Minister is applying a subjective interpretation to the applicable legal provisions (CST rules of procedure, Labour Code), obliging the 46 registered federations and confederations (47, according to the Government) to submit a single list of eight titular members and eight alternate members, despite the fact that the elections held resulted in the complainants' list (of eight titular members and eight alternate members) receiving the backing of 33 federations and confederations, namely 78.6 per cent of the total votes of registered organizations that had taken part in the elections, whereas the list put forward by the other bloc comprised only nine organizations; and the authorities thus disregarded the democratic principle of the prevalence of majorities as established in section 207 of the Labour Code and demanded an absolute, unanimous consensus from the 46 confederations and federations.*
- 323.** *The Committee notes that, according to the complainants, the Ministry of Labour and Social Welfare also publicly announced that it was in the process of formulating and revising the rules of procedure concerning the election of worker representatives to various tripartite institutions. The Committee observes that the Government, in its reply, rejects these allegations and indicates that the rules in question are not being reformed.*
- 324.** *The Committee notes the Government's statements to the effect that: (1) it has tried to facilitate the process to appoint eight titular and eight alternate worker representatives to the CST through a public call for nominations made to the legally registered confederations and federations and through various meetings in 2013, with a view to bringing about a rapprochement and creating forums for dialogue to reach an agreement on the presentation of a single proposal; (2) initially, 28 nominations were made involving three different lists; subsequently two different blocs of federations and confederations (representing six confederations and 31 federations) also supported different lists of elected representatives; one of those blocs further considered that the nominees on the list with the greatest number of votes should be sworn in; (3) in this context, on 4 July 2013, the Ministry called a meeting of the CST executive committee and, since the workers had no elected representatives at that time, it called upon the persons who had acted in that capacity during the previous term of office of the CST, which expired in March 2013. At that meeting, the worker representatives called on the Minister to swear in the nominees on one of the lists which they had submitted, claiming that it was the most representative of the interests of the workers as a whole; the employers also supported that list, which meant that the members who had previously represented the workers would remain in office on the CST; (4) however, to enable the new worker members to be sworn in, it was essential to have a single list of nominees submitted through a procedure recognized by all the organizations; the decision of the Ministry of Labour of 2 July 2013 established the need for a single proposal approved by all the trade union organizations and associations which were entitled to participate; (5) the Government justifies this single list on the grounds that it is not authorized to interfere in a process which is the exclusive purview of the trade union organizations; (6) although the CST does not currently have any worker*

representatives, the Government has sought alternative consultation mechanisms, and in this regard it refers to meetings held with all the legally registered federations and confederations concerning the 2013–14 reports submitted to the ILO, and the establishment of various forums for dialogue with all national sectors in relation to strategic decisions (Government Five-Year Plan, investment for the promotion of employment); and (7) tripartite consultations were also carried out in the public consultation workshops in relation to the Labour and Social Welfare Bill; however, analysis of the inputs from the organizations was the responsibility of the labour subcommittee of the CST and could not, therefore, take place; the draft Code of Labour Procedure was not the work of the Ministry of Labour but was produced by the Supreme Court of Justice; regarding the draft texts that are currently under legislative debate, the Ministry of Labour will carry out consultations with the workers' and employers' organizations in its coordination capacity with the legislature; with regard to the Voluntary Retirement Benefit Act and the approval of the reform of section 189 of the Labour Code (concerning bonus payments), it was not possible to hold tripartite consultations but the new legal texts do not constitute a setback for labour rights.

325. The Committee wishes to emphasize, as it has always done, the vital importance that it attaches to social dialogue and tripartite consultation, not only concerning questions of labour law but also in the formulation of public policy on labour, social and economic matters. The Committee notes with deep regret that the CST, the national tripartite body mandated to perform the abovementioned tasks, has not met since 2013 and that the Government's reply does not refer to any initiatives taken in 2014 or up to the present date to solve the problems arising from the non-appointment of worker representatives to the CST. The Committee observes that, at its June 2013 meeting, when examining a complaint from the leading employers' organization in the country (Case No. 2980), it already noted problems concerning the absence of tripartite consultation on 17 drafts for the revision of 19 laws relating to autonomous institutions which had not been submitted to the CST, draft legislation in respect of which the Government had acknowledged that it allowed the public administration to select private sector representatives to tripartite bodies. In the present case the Committee emphasizes that the large number of complainant national confederations (four) (plus a Central American confederation) and of complainant national federations (26) shows that the situation concerning social dialogue and the functioning of labour relations is a source of great concern in the country's trade union movement.
326. The Committee observes that the complainants highlight the fact that the CST rules of procedure do not establish a specific mechanism for appointing worker representatives. However, the Committee observes that ever since the Government has insisted on the need for a single list, it has been impossible in practice for the CST to be constituted and resume its functions. The Committee notes that, in these circumstances, the current rules did not resolve the situation with regard to the disagreement on a single list of worker representatives by all the higher-level trade union organizations and considers that the resolution of this type of conflict between trade unions should be the responsibility of the judicial authority or an independent arbitrator, and not the administrative authority.
327. The Committee draws the Government's attention to the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 1067]. Moreover, the Committee wishes to underline the principle whereby tripartite consultation should take place before the Government submits a draft to the Legislative Assembly or establishes a labour, social or economic policy, and also highlights 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 1070 and 1073]. The Committee has emphasized the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights [see **Digest**, *op. cit.*, para. 1074]. The Committee further recalls that the process of consultation on legislation and minimum wages helps to give laws, programmes and measures adopted or applied by public authorities a firmer justification and helps to ensure that they are well respected and successfully applied. The Government should seek general consensus as much as possible, given that employers' and workers' organizations should be able to share in the responsibility of securing the well-being and prosperity of the community as a whole. This is particularly important given the growing complexity of the problems faced by societies. No public authority can claim to have all the answers, nor assume that its proposals will naturally achieve all of their objectives [see **Digest**, *op. cit.*, para. 1076].

- 328.** *The Committee underlines the urgent need for in-depth consultations with the confederations and federations in order to establish clear and stable rules for the appointment of worker representatives to the CST (particularly when there is no single list of worker representatives) which respect the criterion of representativeness requests the Government to keep it informed in this regard. Taking into account the urgency of this situation the Committee invites the Government to accept an ILO technical assistance mission to help in finding a solution to the issues raised.*

The Committee's recommendations

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

- (a) Given the fact that this case involves a conflict between trade union organizations, hindering the establishment of the Higher Labour Council (CST), the Committee underlines the need for the CST to be constituted as a matter of urgency based on the criterion of representativeness of organizations so that its functions may resume.*
- (b) The Committee underlines the urgent need for in-depth consultations with the confederations and federations in order to establish clear and stable rules for the appointment of worker representatives to the CST (particularly when there is no single list of worker representatives) which respect the criterion of representativeness and requests the Government to keep it informed in this regard.*
- (c) Taking into account the urgency of this situation, invites the Government to accept an ILO technical assistance mission to help in finding a solution to the issues raised.*

CASE NO. 2962

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

**Complaint against the Government of India
presented by
the Centre of Indian Trade Unions (CITU)**

***Allegations: The complainant organization
alleges refusal by the management of the
M/s A.M.S. Fashions Private Limited to
negotiate with the Vastra Silai Udhyog Kamgar
Union, affiliated to the CITU, police
interference in an industrial action, anti-union
dismissals and the lack of grievance
mechanisms in the state of Uttar Pradesh***

- 330.** The complaint is contained in communications dated 28 and 29 May 2012, submitted by the Centre of Indian Trade Unions (CITU).
- 331.** The Government provided partial observations in communications dated 18 February 2013, 25 November 2013, 1 August 2014, 17 December 2014 and 22 April 2015.
- 332.** India has neither ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 333.** In communications dated 28 and 29 May 2012, the CITU alleges that the management of M/s A.M.S. Fashions Limited, a garment exporting company operating in the Noida Special Economic Zone (NSEZ) of the state of Uttar Pradesh, refused to negotiate with the Vastra Silai Udhyog Kamgar Union, a CITU affiliate. The CITU adds that police interfered in an industrial action and that the company proceeded with anti-union lay-offs and dismissals. The CITU also alleges that the Government of India has been negligent in addressing grievances of workers in the state of Uttar Pradesh.
- 334.** The CITU indicates that the Government of Uttar Pradesh issued an Office Order on 27 September 2008 vesting the powers and responsibilities of the Labour Commissioner of Uttar Pradesh with the Chief Executive Officers of Noida and Greater Noida regions of Uttar Pradesh. The CITU alleges that, as a result, the effective functioning of grievance and dispute settlement mechanisms of the workers in the region have become a far cry.
- 335.** The complainant enclosed a communication of the Vastra Silai Udhyog Kamgar Union dated 9 January 2012 addressed to the Labour Minister of India which listed the events occurring at M/s A.M.S. Fashions Limited. The union indicates that the dispute between the management of the company and its workers started with the non-payment of earned wages for the month of August 2011. According to the union, when workers demanded the payment of their wages, the management of the company called the police, instead of attempting to resolve the issue with the workers concerned. Moreover, the union alleges that the company failed to pay bonuses that were due to the workers for 2010–11.

336. The union then approached the Assistant Development Commissioner of the NSEZ, who is also the designated authority for labour disputes, who then issued a notice to the management of the company to resolve the matter through conciliation.
337. According to the complainant organization, the management of the company refused to negotiate with the Vastra Silai Udhyog Kamgar Union and took the decision to lay off 405 workers from 17 October 2011. Subsequently, a notice of retrenchment of 110 workers from 3 February 2012 was placed on the premises of the company. According to the complainant organization, the lay-off and retrenchment decisions were taken in violation of section 25(M) and section 25(O) of the Industrial Disputes Act, 1947.
338. Despite repeated written complaints submitted by the union, the Assistant Development/Labour Commissioner has not resolved the disputes, nor taken any action against the company.

B. The Government's reply

339. In its communication of 18 February 2013, the Government transmits information received from the Development Commissioner and Labour Commissioner of the NSEZ on 13 February 2013 indicating that earned wages by the workers for the month of August 2011 and bonuses for the year 2010–11 have been paid by M/s A.M.S. Fashions Limited and that the relevant unit is no longer functioning.
340. With regard to the other allegations mentioned in the complaint, the Government adds that the Office of the Development Commissioner of the NSEZ received a request from the union on 24 December 2012 to constitute a Reconciliation Board, in accordance with the Uttar Pradesh Industrial Disputes (UPID) Act, 1947. The names of the nominees from the management and the union have been sought, and the Board was under the process of constitution.
341. In its communication of 25 November 2013, the Government indicates that no new information was received concerning the establishment of the Reconciliation Board.
342. In its communication of 1 August 2014, the Government states that the case was referred to the Labour Tribunal in Meerut on 20 January 2014 and that a decision was awaited.
343. In its communication of 17 December 2014, the Government reiterates that the case had been referred to the Labour Tribunal in Meerut, adding that the principal employer filed an appeal in the High Court of Allahabad against the referral order.
344. In its communication of 22 April 2015, the Government refers to the appeal filed by the employer in the High Court, Allahabad, against the referral order and states that M/s A.M.S. Fashions Limited has obtained a stay in the matter. A counter affidavit has been filed on behalf of the Development Commissioner of the NSEZ but the applicant, M/s A.M.S. Fashions Limited, has not filed a rejoinder (an answer to the affidavit).

C. The Committee's conclusions

345. *The Committee notes that this case concerns allegations of acts of anti-union discrimination, including refusal by the management of M/s A.M.S. Fashions Private Limited to negotiate with the Vastra Silai Udhyog Kamgar Union, affiliated to the CITU, police interference in an industrial action, the non-payment of wages and bonuses, and lay-offs and dismissals in relation to which the courts have not yet rendered a decision. It*

further notes that this case also concerns the lack of effective grievance mechanisms in the state of Uttar Pradesh.

346. *As regards the anti-union lay-offs, dismissals and the lack of effective grievance mechanisms in the state of Uttar Pradesh, the Committee notes that the Office of the Development Commissioner of the NSEZ received a request from the union on 24 December 2012 to constitute a Reconciliation Board, in accordance with the UPID Act, 1947. It notes that, since this date, the Government has not provided any new information concerning the establishment of the Reconciliation Board.*

347. *The Committee observes that the responsibilities of the Labour Commissioner of Uttar Pradesh are vested with the Development Commissioner of Noida and Greater Noida regions of Uttar Pradesh. The Committee notes from the CITU that, as a result, the effective functioning of grievance and dispute settlement mechanisms of the workers in the region have become a far cry. As alleged by the Vastra Silai Udhyog Kamgar Union, repeated written complaints were submitted to the Assistant Development/Labour Commissioner to resolve the disputes, but no action was taken in this regard. The Committee recalls its conclusions from an earlier case [Case No. 2228, Report No. 332, para. 748] regarding the incompatibility that may exist between the functions of Development Commissioner and Labour Commissioner when performed by the same person. The Committee notes, moreover, that the complainant alleges that this mechanism does not have the confidence of all parties concerned, especially when allegations of anti-union discrimination are directed against the NSEZ administration itself, as in this case. The Committee requests the Government to take all necessary measures without delay to ensure that the functions of Labour Commissioner are not performed by the Development Commissioner in the NSEZ, especially as regards conciliation and mediation efforts, but by an independent person having the confidence of the parties or an impartial body. It requests the Government to keep it informed of the steps taken in this regard.*

348. *The Committee observes that the lay-offs and retrenchments in this case were then referred to the Labour Tribunal in Meerut on 20 January 2014, while an appeal was filed by the company in the High Court of Allahabad against the referral order. The Committee further notes that these court decisions are still awaited. The Committee queries the objective behind appealing the mere referral of this case for resolution to the Labour Tribunal, which would appear to be delaying the consideration of the merits of the case, and recalls in this regard the principle that justice delayed is justice denied [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 105].*

349. *The Committee wishes to emphasize that the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned. Respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see **Digest**, op. cit., paras 817 and 820]. The Committee therefore requests the Government to ensure that this principle is ensured in the cases of the workers laid off or dismissed and, if it is confirmed that the imposition of the lay-offs and dismissals were linked with the legitimate trade union activities of the workers, to take measures to ensure that the workers concerned are appropriately compensated, including through reinstatement, if this is still possible.*

350. *In the meantime, the Committee expresses its deep concern that over three years have lapsed since the lay-offs and retrenchments. Noting that it would appear from the information provided by the NSEZ that the unit no longer exists and in light of the appeals*

process currently ongoing, the Committee requests the Government to endeavour to bring the parties together without delay along the lines requested in December 2012 with a view to considering all elements raised, and finding a solution in the current context that is satisfactory to all parties concerned.

- 351.** *As regards the allegation that wages for the month of August 2011 and bonuses for the year 2010–11 were unpaid by M/s A.M.S. Fashions Limited, the Committee notes the Government's communication transmitting information from the NSEZ on 13 February 2013 concerning the payment of wages for August 2011 and bonuses for 2010–11.*
- 352.** *Finally, in the absence of any information from the Government in relation to the allegations raised in the complaint of police interference in respect of industrial action, the Committee requests the Government to take the necessary measures without delay to carry out an investigation into this matter and to inform the Committee of the outcome.*

The Committee's recommendations

- 353.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee requests the Government to take all necessary measures without delay to ensure that the functions of Labour Commissioner are not performed by the Development Commissioner in the NSEZ but by an independent person having the confidence of the parties or an impartial body. It requests the Government to keep it informed of the steps taken in this regard.*
 - (b) The Committee requests the Government to ensure that the principle that complaints of anti-union discrimination are examined in the framework of national procedures which are prompt, impartial and considered as such by the parties concerned is observed in the cases of the workers laid off or dismissed and, if it is confirmed that the imposition of the lay-offs and dismissals were linked with the legitimate trade union activities of the workers, to take measures to ensure that the workers concerned are appropriately compensated, including through reinstatement if this is still possible.*
 - (c) Expressing its deep concern that over three years have lapsed since the lay-offs and retrenchments, the Committee requests the Government to endeavour to bring the parties together without delay, along the lines requested in December 2012, with a view to considering all elements raised and finding a solution in the current context that is satisfactory to all parties concerned.*
 - (d) The Committee also requests the Government to take the necessary measures without delay to carry out an investigation into the allegations raised in the complaint of police interference in respect of industrial action and to inform the Committee of the outcome.*

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

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

Allegations: The complainants allege that the authorities and the employer committed several and continued acts of repression against the local trade union at the bus company, including: harassment of trade unionists and activists; violent attacks on the union's founding meeting; the violent disbanding, on two occasions, of the union general assembly; arrest and detention of large numbers of trade union members and leaders under false pretences (disturbing public order, illegal trade union activities)

354. The Committee has already examined the substance of this case on eight occasions, most recently at its March 2014 meeting, when it presented an interim report to the Governing Body [371st Report, paras 550–569, approved by the Governing Body at its 320th Session (March 2014)].

355. The Government sent its observations in communications dated 18 March 2014 and 10 March 2015.

356. The Islamic Republic of Iran has not ratified either the Freedom of Association and the 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

357. At its March 2014 meeting, the Committee made the following recommendations [see 371st Report, para. 569]:

- (a) The Committee expects that the Government will be able to report without further delay on the outcome of 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, 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. Finally, encouraged by the new Government's stance against the detention of social and trade union activists, the Committee urges the Government to secure without further delay Mr Shahabi's parole, pardon and immediate release from prison, 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 requests the Government to keep it informed in this regard.
- (b) 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.

- (c) The Committee once again requests the Government to provide a detailed report of the findings of the 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's judgment on the action initiated by the union concerning the attacks on union meetings in May and June 2005, once it is handed down.
- (d) The Committee welcomes the Government's request for an ILO technical cooperation for the training of its disciplinary forces for the proper management of labour protests and expects that the Government will engage with the Office in this respect without delay. It requests the Government to keep it informed on the progress made in this regard.
- (e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

B. The Government's reply

- 358.** In its communications dated 18 March 2014 and 10 March 2015 the Government reiterates its desire to cooperate with the International Labour Standards Department and provides the following information. Concerning the alleged torture that Mr Ebrahim Madadi's had been subjected to while in detention, the Government submits that the Ministry of Cooperatives, Labour and Social Welfare has followed up the matter with the High Council for Human Rights. According to the reply received from the said Council, considering that torture is illegal under the Constitution, Mr Madadi has not been subjected to such kind of ill-treatment while in detention. The Government further indicates that after thirty years of service at the Tehran and Suburbs Bus Company, Mr Madadi has retired. Regarding the repeated recommendations of the Committee for the release of Mr Reza Shahabi from prison, the Government indicates that his probationary release has been granted by the judicial authorities and that he was currently free and has returned to work.
- 359.** The Government further refers to the visit of a High-level ILO Mission in May 2014. According to the Government, the Mission met with the Government's and social partners' representatives and had a chance to witness the exercise of freedom of association rights by workers' and employers' organizations. The Mission was informed of the distinct role these organizations played in the national process of decision-making. The Government further reiterates that the Labour Law amendment has been prepared in consultations with the social partners and was currently pending for adoption in Parliament.
- 360.** Finally, the Government informs that during the 103rd Session of the International Labour Conference, it has signed a cooperation agreement with the International Training Centre of the ILO (ITC-ILO), whose experts have met with the Government and the judicial authorities. A possibility of conducting a training course for the judiciary is being currently considered.

C. The Committee's conclusions

- 361.** *The Committee recalls that this case, initially lodged in July 2006, concerns acts of repression against the local trade union at the bus company, including: harassment of trade unionists and activists; violent attacks on the union's founding meeting; the violent disbanding, on two occasions, of the union general assembly; and the arrest and detention*

of large numbers of trade union members and leaders under false pretences (disturbing public order, illegal trade union activities).

- 362.** *The Committee notes the information provided by the Government on its efforts to address the Committee's recommendation (a). In particular, the Committee notes that regarding Mr Madadi's (Vice-President of the Tehran Vahed Bus Company (SVATH) union) alleged torture during detention, the Government submits that the High Council for Human Rights considered that in view of the illegality of torture pursuant to the Constitution, Mr Madadi has not been subjected to any such ill-treatment while in detention. The Government further indicates that after 30 years of service at the Tehran and Suburbs Bus Company, Mr Madadi has retired. Regarding the repeated recommendations of the Committee for the release of Mr Reza Shahabi from prison, the Government indicates his probationary release has been granted by the judicial authorities and that he was currently free and has returned to work.*
- 363.** *The Committee regrets the apparent lack of investigation into the allegation of ill-treatment suffered by Mr Madadi's while in detention; it appears from the Government's reply that the High Council for Human Rights has merely concluded that as torture was prohibited under the Constitution, Mr Madadi could not have been tortured. The Committee emphasizes that in cases of alleged torture or ill-treatment while in detention, governments should carry out full and independent inquiries into complaints of this kind. The Committee further regrets that no information has been provided on the outcome of an independent investigation into similar allegations concerning Mr Reza Shahabi (Treasurer of the Syndicate of Workers of Tehran and Suburbs Bus Company). The Committee therefore urges the Government to carry out independent investigations into the allegations of ill-treatment to which Mr Madadi and Mr Shahabi 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.*
- 364.** *Welcoming the Government's indication that Mr Shahabi is currently on probationary release and has returned to work, the Committee urges the Government to secure without further delay his definitive release, through a 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.*
- 365.** *The Committee notes the Government's indication that the Labour Law amendment has been prepared in consultation with the social partners and was currently pending for adoption in Parliament. The Committee recalls that it has examined the draft amendments to the Labour Law in the framework of Case No. 2807 [see 371st Report, paras 570–579, March 2014]. On that occasion, the Committee, while welcoming the Government's indicated intention to ensure that the amended Labour Law was in conformity with the relevant ILO instruments, considered that it was not clear, at that stage, to what extent the Labour Law and the accompanying regulations 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.*
- 366.** *In this connection, the Committee notes the reference made by the Government to the visit of a High-level ILO Mission in May 2014. The Committee recalls that the objective of the Mission, requested by the Committee on the Application of Standards of the International*

Labour Conference, was to assess the situation with respect to the issues raised under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), but further observes that the Mission had the opportunity to discuss the developments concerning freedom of association in the country and possible solutions and the way forward with the Government and the social partners. The Mission welcomed the willingness expressed by Government representatives at various levels to amend the Labour Law in order to bring it into full conformity with the ILO principles on freedom of association and, in this regard, learned that the Labour Law amendments submitted to the Office on October 2013 and examined by the Committee in March 2014 were not the most recent amendments. The Committee further understands that a recent resolution by the National Labour Conference calls for the preparation of the necessary groundwork for the ratification of Conventions Nos 87, 98 and 138.

- 367.** *Noting that the proposed amendments to the Labour Law were currently pending in Parliament, the Committee expects that the legislation 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.*
- 368.** *The Committee deeply regrets that no information has been provided by the Government on the measures taken to address the remaining outstanding recommendations. With regard to the registration of the SVATH union, the Committee recalls that the legislative obstacle raised in this case is the issue of organizational monopoly enshrined in the current Labour Law rendering the registration of organizations outside the existing structures impossible. Pending the implementation of the legislative reforms, the Committee therefore once again 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.*
- 369.** *The Committee further 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.*
- 370.** *The Committee recalls that it had previously welcomed the Government's request for ILO technical cooperation for the training of its disciplinary forces for the proper management of labour protests and expects that the Government will engage with the Office in this respect without delay. The Committee further notes the interest expressed by the Government to conduct, in collaboration with the ITC-ILO, a training course on international labour standards for the judiciary and requests the Government to keep it informed on the progress made in this regard.*

The Committee's recommendations

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

- (a) *The Committee 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.*
- (b) *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.*
- (c) *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.*
- (d) *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.*
- (e) *The Committee once again requests the Government to provide a detailed report of the findings of the 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.*
- (f) *Recalling that it had previously welcomed the Government's request for ILO technical cooperation for the training of its disciplinary forces for the proper management of labour protests, the Committee expects that the Government*

will engage with the Office in this respect without delay. The Committee further notes the interest expressed by the Government in a training course on international labour standards for the judiciary and requests the Government to keep it informed on the progress made in this regard.

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

CASE No. 2794

DEFINITIVE REPORT

**Complaint against the Government of Kiribati
presented by
the Kiribati Trade Union Congress (KTUC)**

***Allegation: The complainant organization
alleges the infringement of the right to strike in
the education sector***

- 372.** The Committee last examined this case at its October 2013 meeting, when it presented an interim report to the Governing Body [370th Report, paras 456–464 approved by the Governing Body at its 319th Session (October 2013)].
- 373.** The Government sent its observations in a communication dated 31 March 2015.
- 374.** Kiribati 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

- 375.** In its previous examination of the case, the Committee made the following recommendations [see 370th Report, para. 464]:
- (a) The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has once again not replied to the complainant's allegations, even though it has been requested several times, including through an urgent appeal. The Committee urges the Government to be more cooperative in this case and strongly encourages the Government to seek technical assistance from the Office.
 - (b) The Committee urges the Government to provide detailed information in reply to the allegations that the Minister of Labour declared the strike even though the KUT complied with all the prerequisites to declare a strike under the applicable laws.
 - (c) The Committee further urges the Government to provide detailed information without delay in relation to the allegations of threats and intimidation by the Ministry of Education during the strike, to the effect that failure to return to work would lead to the dismissal of the strikers, as well as the allegations concerning sanctions and the dismissal of members of the KUT for the strike action. It urges the Government to take the necessary measures to ensure that any worker who has been dismissed for the exercise of legitimate strike action is immediately reinstated in his or her post, with payment for lost wages and that any sanctions taken against them are lifted.

- (d) The Committee requests the Government and the complainant to indicate the status of the negotiations between the Ministry of Education, the Public Service Office and the KUT and to indicate whether a new collective bargaining agreement has since been signed.

B. The Government's reply

- 376.** In its communication dated 31 March 2015, the Government indicates that in respect of the issue of legality of the strike initiated by the Kiribati Union of Teachers (KUT), the Minister of Labour sent the advice that the procedure to consider their dispute had not yet been exhausted given that the Ministry of Education and Public Service Office (PSO) were still progressively reviewing all the items proposed in the Collective Bargaining Agreement (CBA). Despite this, the KUT continued to believe that the time limit had lapsed and that the procedure to resolve their dispute under the provisions of the Industrial Relations Code (IRC) had been exhausted. While the KUT had appealed the matter of the legality of the strike action to the High Court (heard on 22 November 2011) and later to the Court of Appeal (heard on 10 August 2012), the decisions in both these cases (copies of the courts decisions annexed the Government's reply) confirmed that the teachers' strike was illegal.
- 377.** As regards the allegations of threats and intimidation by the Ministry of Education during the strike, the Government indicates that: (1) there was no evidence of such allegations and as the teachers strike took place during the exam week, retired teachers were engaged to fill the gap; (2) after the strike most teachers were permitted to return to work and the Ministry of Education resumed payment of their wages; (3) the strike leaders that were dismissed on grounds of illegal strike were all reinstated after appealing to the Public Service Commission; and (4) there were no sanctions imposed against teachers who engaged in the strike.
- 378.** With respect to negotiations between the Ministry of Education, the PSO and the KUT, the Government indicates that a collective bargaining agreement is yet to be reached and signed, however the Ministry of Education and the PSO are still considering proposals for a CBA by the KUT. The Government also indicates that, while being aware of KUT's right to bargain collectively under section 41 of the IRC, including for public servants engaged under national conditions of service (such as teachers), its obligations under the IRC do not extend to concluding a collective bargaining agreement but rather just to engaging in bargaining for one, and points out that there is no history or practice of collective bargaining in Kiribati as the terms and conditions of employment for all public servants have instead been prescribed by way of a system of National Conditions of Service or occasional promulgations by the Government. Therefore in the Government's view, entering into a collective bargaining agreement with KUT may have significant implications for the regulation of terms and conditions of employment for all other public servants and consequently careful consideration needs to be given to this matter. Moreover, it is likely that technical assistance may be required to support all parties to engage in collective bargaining and preliminary discussions have been undertaken with the ILO Suva office in this regard.
- 379.** Lastly, the Government indicates that it is currently engaged in a process of labour law reform to improve the application of Conventions Nos 87 and 98 and hopes that a legislative structure more supportive of and conducive to collective bargaining will soon be adopted.

C. The Committee's conclusions

- 380.** *The Committee recalls that this case concerns allegations of infringement of the right to strike of the KUT by the Government and acts of anti-union discrimination in connection with a strike that took place from 4 to 7 December 2009.*
- 381.** *With respect to the legality of the strike, the Committee notes the Government's indication that the Minister of Labour had advised the KUT that the procedure to consider their dispute had not yet been exhausted given the fact that the Ministry of Education and the PSO were still reviewing all the proposed items in the CBA. It also notes that the Government refers to the decisions rendered by the High Court and the Court of Appeal wherein they both determined that the strike was illegal.*
- 382.** *Furthermore, as concerns the alleged threats and intimidations made by the Minister of Education during the strike, the Committee takes note of the Government's statement that: (1) there was no evidence of such allegations and as the teachers strike took place during the exam week, retired teachers were engaged to fill the gap; (2) after the strike most teachers were permitted to return to work and the Ministry of Education resumed payment of their wages; (3) the strike leaders that were dismissed on grounds of illegal strike were all reinstated after appealing to the Public Service Commission; and (4) there were no sanctions imposed against teachers who engaged in the strike. Lastly, the Committee notes the Government's indication that no CBA has been signed due in part to the fact that collective bargaining has no history and is not practiced in Kiribati. Entering into a collective bargaining agreement with KUT requires careful consideration as it may have significant implications for the regulation of terms and conditions of employment for all other public servants. Preliminary discussions have taken place with the ILO Suva Office for the provision of technical assistance to support the capacity of the parties to engage in collective bargaining.*
- 383.** *In respect of the legality of the strike, the Committee observes that the Court rulings found that the strike declaration by the KUT was procedurally flawed, failing to be in conformity with the relevant provisions of the IRC. Section 10(1) of the IRC provides that where the Minister has taken a step under section 9(1) and is informed by any party to the dispute that settlement of the dispute has not been effected and is satisfied that the dispute has not in fact been settled, he or she may within 7 days of being so informed inform the parties or their representatives that he or she intends to take a further step under section 9(1). Section 9(1) states that the Minister shall consider every trade dispute of which a report has been made to him in accordance with section 7 and may take any one or more of the following steps as seem to him most expedient for promoting a settlement of the dispute: (a) where he is of the opinion that any appropriate machinery for the settlement of trade disputes which may exist otherwise than by virtue of this Code has not been made use of or sufficient use of by the parties to the dispute, refer the dispute back to the parties for negotiation or further negotiation and settlement through that machinery; (b) refer the dispute to the Registrar under section 7; (c) in any event refer the dispute back to the parties and if he thinks fit make proposals to the parties or to any of them upon which a settlement of the dispute may be negotiated by them; (d) refer the dispute to a board of inquiry under section 18; and (e) refer the dispute to the Income Commission under section 19.*
- 384.** *According to the Courts, the letter of 9 October 2009 which KUT argued was the notification of the failure to settle the dispute to the Minister of Labour cannot be considered to be in compliance with section 10(1) in light of the fact that on 6 October 2009 KUT had written to the Minister of Education proposing a negotiation date – 21 October 2009. Therefore, for KUT to claim on 9 October that the negotiation was ineffective would have been premature as another round of negotiations had yet to take*

place between the parties; it should have waited for the result of the negotiation of 21 October 2009. The Courts therefore determined that the procedures for settlement were not exhausted, thus rendering the strike unlawful.

- 385.** *For its part, the Committee notes that pursuant to section 27 of the IRC a strike shall not be unlawful if: (a) 21 days have elapsed since the date on which the report of the trade dispute in furtherance of which the strike has taken place was made to the Minister or Registrar in accordance with section 7; and (b) the Minister has taken no step under section 9(1) or if he has taken such a step his decision has not been communicated to the parties to the dispute or to their representatives in accordance with section 9(2); or (c) the Registrar has taken no step under section 8(1) or if he has taken such a step his decision has not been communicated to the parties to the dispute or to their representatives in accordance with section 8(2). The Committee notes that on 15 September 2009 a log of claims was submitted to the Minister and was subsequently followed by another letter dated 24 September 2009 from the union formally reporting a trade dispute to the Minister under section 7(1) of the IRC. On 2 October 2009, the Minister of Labour wrote to the union referring the matter back to the parties and calling for further dialogue between them before addressing the issue as a trade dispute to which the union responded through a letter dated 9 October 2009 that this avenue of negotiation did not work and that it had complied with the provisions of section 7 on reporting trade disputes. On 3 November 2009, the union informed the Minister that in accordance with section 10(2) the procedures prescribed by the IRC for the settlement of trade disputes were deemed exhausted as the settlement of the dispute had not been effected and the Minister had failed to inform the Union of his intention to take a further step under section 9(1) or failed to take that step within 7 days. In communications dated 5 and 6 November 2009 addressed to the union, the Minister recalled that he had already referred the matter back to the parties on 2 October 2009 for further negotiations in line with section 9(1)(a) of the IRC and reiterated the need for the parties concerned to sit together to discuss the matter before he could take any further step.*
- 386.** *As regards the dispute resolution procedure set out in sections 8(1) and 9(1) of the IRC, the Committee recalls that the Committee of Experts on the Application of Conventions and Recommendations had previously observed that there are no specific time limits for the exhaustion of conciliation proceedings and that sections 8(1)(a), (b), (c) and 9(1)(a) give the Registrar and the Minister the power to prolong the negotiation, conciliation and settlement procedure at their discretion, without any fixed time limits (or even refer to compulsory arbitration (sections 7,8,9,12 and 14)), while according to section 27(1), a strike which takes place before the exhaustion of procedures prescribed for the settlement of trade disputes, shall be unlawful.*
- 387.** *Recalling that the conciliation and mediation machinery should have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness, the Committee notes the recent Government indication to the Committee of Experts that a shortened time frame for the Registrar's response to an employment dispute report is proposed in the framework of the new Draft Employment and Industrial Relations Code 2013 (draft 2013 Code). The Committee requests the Government, in light of its ratification of Conventions Nos 87 and 98, to provide a copy of the draft 2013 Code to the Committee of Experts.*
- 388.** *Noting the Government indication that most teachers were permitted to return to work after the strike, the dismissed strike leaders were all reinstated and no sanctions were imposed on teachers that had engaged in the strike, the Committee observes that the only remaining outstanding matter is the question of the need to promote collective bargaining in the sector. In this regard, the Committee regrets that no CBA has been signed in the education sector nearly six years after the strike occurred. It observes that the Government*

has indicated that there is no collective bargaining history in Kiribati and that all parties involved need assistance in building their capacity in this regard. Indeed the specific case before it would appear to confirm a need for capacity building in relation to collective bargaining for all parties. Noting further that a labour law reform has been undertaken by the Government to improve the application of Conventions Nos 87 and 98, and welcoming its engagement in discussion with the ILO to promote collective bargaining, the Committee invites the Government to avail itself of ILO technical assistance with a view to developing, in consultation with the social partners, a collective bargaining framework appropriate to the national context, combined with capacity building for all parties, which would give full effect in law and in practice to Article 4 of Convention No. 98 ratified by Kiribati.

The Committee's recommendations

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

- (a) With respect to the dispute resolution procedure, the Committee notes that a shortened time frame for responding to an employment dispute report is proposed in the framework of the new Draft Employment and Industrial Relations Code 2013. The Committee requests the Government, in light of its ratification of Conventions Nos 87 and 98, to provide a copy of the draft to the Committee of Experts on the Application of Conventions and Recommendations.*
- (b) As regards collective bargaining, the Committee invites the Government to avail itself of ILO technical assistance with a view to developing, in consultation with the social partners, a collective bargaining framework appropriate to the national context, combined with capacity building for all parties, which would give full effect in law and in practice to Article 4 of Convention No. 98 ratified by Kiribati.*

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 the Pearl Continental Hotel Karachi and the failure of the Government to ensure the principles of freedom of association as set out in the ILO Constitution and Conventions Nos 87 and 98

- 390.** The Committee last examined this case at its June 2014 meeting when it presented an interim report to the Governing Body [see 372nd Report, approved by the Governing Body at its 321st Session (June 2014), paras 474–497].
- 391.** The complainant organization, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), submitted additional observations in a communication dated 7 April 2015.
- 392.** At its March 2015 meeting [see 374th Report, para. 6], the Committee issued an urgent appeal indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the information or observations requested from the Government had not been received in due time. To date, the Government has not sent any information in this regard.
- 393.** 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

- 394.** In its previous examination of the case, the Committee made the following recommendations [see 372nd Report, para. 497]:
- (a) The Committee urges the Government to provide its observations on the complainant's serious allegations without further delay.
 - (b) In light of the principles enounced in its conclusions, the Committee expects the Government to make every effort to ensure respect for these principles in the aforementioned hotel establishment. In particular, as it has done in previous cases concerning Pakistan, the Committee requests the Government to institute immediately an independent inquiry into the following allegations: (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; (iii) the subsequent brief arrest of 50 union officers and members and filing of criminal charges against them; and (iv) the anti-union dismissals of 62 union officers and members following the strike; with a view to fully clarifying the facts, determining responsibilities, punishing those responsible and preventing the repetition of such acts. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up or redress measures taken. It firmly expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their swift reinstatement in their previous positions without loss of pay and the immediate dropping of all pending criminal charges.
 - (c) The Committee requests the Government to make efforts to obtain the comments of the company, via the employers' organization concerned, so that the Committee may examine the allegations in this case in full knowledge of the facts.

B. Additional information from the complainant

- 395.** In its communication dated 7 April 2015, the IUF provides observations on the developments occurring since its last communication of 8 April 2013 [see 372nd Report, paras 477–488].
- 396.** With respect to the anti-union dismissals, as reported under Case No. 2169, the complainant indicates that 21 union officers and members are still awaiting reinstatement

more than two years after the definitive court order by the Sindh Labour Appellate Tribunal on 15 January 2013, which the Government refuses to enforce. Five workers have reached retirement age and one has died while awaiting reinstatement. Over the next few years, many more will reach retirement age without having obtained justice.

- 397.** With respect to union member Shazia Nosheen, who was detained by hotel management on 25 February 2013 and pressured to sign a false statement, she is still on bail as her case is still pending in court. With respect to the 13 March 2013 mass arrests of union members and officers, police filed charges against 47 members and union officers, including five members of the union Executive, charging them with an illegal presence at the hotel, although they were legally employed by the hotel according to the terms of the reinstatement order, as noted above. The complainant adds that the case continues and the accused union members are required to present themselves in court on a monthly basis. The complainant considers that this is yet another instance where police and courts are being used to frustrate the implementation of the Committee's recommendations and reinstatement decisions of the Labour Court. The complainant states that management of the hotel still refuses to recognize the union and enter into good faith collective bargaining negotiations, and the Government refuses to effectively ensure basic rights and recognition to the union.
- 398.** With respect to the 20 March 2013 stay orders of the National Industrial Relations Commission (NIRC) prohibiting hotel management from taking any action against 62 workers, only 7 have been allowed to return to work and 47 are still seeking to return to work after being refused entry by security guards.
- 399.** The complainant is of the view that the following sequence of events illustrates the numerous legal and other barriers workers have been forced to endure since the complaint was lodged. On 1 April 2013, hotel management wrote to the union's General Secretary Ghulam Mehboob indicating that it refused to accept the NIRC order and denying that any workers were prevented from entering the hotel. The General Secretary replied on 6 April 2013 stating that workers were denied entry by hotel security and were obliged to sit outside the hotel gate. On 8 April 2013, the NIRC instructed the hotel to allow workers to perform their duties; on 9–10 April 2013, the union's General Secretary wrote to the hotel informing management that 62 workers were denied access to their workplaces and payment of their salaries in violation of the NIRC orders.
- 400.** On 18 April 2013, workers once again informed the NIRC that they were denied entry to the hotel, were unable to perform their duties and were not receiving their salaries. The NIRC responded by instructing management to release these workers' salaries and to allow them to enter the premises to perform their jobs; the Assistant Director of Labour from the provincial ministry would accompany the workers into the hotel. Management of the hotel allowed 30 workers out of 62 to come inside the gate, but they were then told to sit in the parking area, where they remained for one week. On 26 April 2013, management applied to the NIRC to put these 30 workers on 'special leave'; the request was granted. The remaining 32 workers were not taken on duty, although the hotel management presented nothing in writing. Employment was terminated with regard to six of the 32 workers by verbal communication because they were third party contract workers; their cases are pending at the NIRC. There were no sessions of the Karachi NIRC from May to October 2013.
- 401.** On 31 October 2013, workers wrote to the NIRC stating that they were not being paid their full compensation (gratuities and bonuses). The NIRC instructed the hotel management to pay the employees their full salaries, but management failed to implement the order. On 8 November 2013, workers filed a complaint with the NIRC stating that, despite the stay orders, hotel management was not allowing them to work. The NIRC directed the General

Manager of the hotel to appear in court. The union's General Secretary wrote to the hotel management on 19 November 2013 demanding implementation of the 31 October 2013 order. The union President wrote to management on 20 November 2013 requesting the hotel to pay the arrears in the obligatory annual pay increment. The hotel management did not respond to the communication.

- 402.** On 14 February 2014 and on 1 April 2014, workers who were stopped at the hotel gate from entering the premises each wrote separate letters to management protesting their lack of access in defiance of the stay orders and requesting legal entitlements due to them as employees. Management did not respond to these communications. On 19 May 2014, hotel management transferred the 12 workers barred from entering the hotel to Pearl Continental facilities in Peshawar, Muzaffarabad and Rawalpindi. Eleven of these workers wrote to the NIRC on 3 June 2014; the NIRC stopped the transfer orders and requested a response from management.
- 403.** On 26 August 2014, a hearing on the case involving the Pearl Continental workers was held at the NIRC which the General Manager of the hotel attended. The General Manager promised to resolve the outstanding issues within 15 days. At the NIRC hearing of 17 September 2014, the Human Resources Director stated that the General Manager had been transferred and that other issues were being discussed by the Board of Directors. NIRC sessions of 12 and 27 November were adjourned because management did not respond on the outcome of the meeting of the Board of Directors.
- 404.** On 16 December 2014, the NIRC ordered the payment of salaries to union officers and members who were reinstated by orders of the appeal tribunal and labour court. The hotel did not respond to a communication from the union demanding compliance with the decision. On 20 January 2015, 17 workers were barred from entering the hotel by security and 27 workers were put on 'special leave' to receive only the base salary rather than the full compensation to which they are legally entitled.
- 405.** In the complainant's view, despite the clear decisions rendered by the NIRC and the Sindh Labour Appellate Tribunal, the police and other branches of the judicial system have colluded with the Pearl Continental Hotel Karachi management to prevent the implementation of these decisions as well as the recommendations of the Committee.
- 406.** The complainant states that the information provided in its communication demonstrates the Government's failure to comply with the letter and spirit of the ILO's recommendations as well as complicity in ongoing rights violations. Flagrant violations of freedom of association continue and the complainant therefore calls on the Committee to respond firmly and appropriately.
- 407.** The complainant adds that there has been essentially one uninterrupted sequence of violations of freedom of association over 14 years at the Pearl Continental Hotel Karachi. The IUF therefore urgently calls on the Committee to recall to the Government of Pakistan its obligations.

C. The Committee's conclusions

- 408.** *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 two urgent appeals [see 371st and 374th Reports, para. 6].*
- 409.** *In these circumstances and in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], the*

Committee finds itself obliged to present, once again, a report on the substance of the case without being able to take into account of the information it hoped to receive from the Government.

410. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in practice. The Committee remains confident that, while the procedure protects governments from unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].*
411. *The Committee recalls that this case concerns serious allegations of anti-union actions by the management of the Pearl Continental Hotel Karachi and the failure by the Government to ensure that Conventions Nos 87 and 98 are applied in practice.*
412. *With regard to the anti-union dismissals which were examined under Case No. 2169, the Committee notes the complainant's indication that 21 union officers and members are still awaiting reinstatement more than two years after the definitive court order by the Sindh Labour Appellate Tribunal on 15 January 2013. It notes that five workers have reached retirement age and one has died while awaiting reinstatement. The Committee recalls in this regard the principle that justice delayed is justice denied [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 105].*
413. *The Committee further recalls the allegations of this present case which were examined at its June 2014 meeting [see 372nd Report, para. 493] and notes the additional information provided on the following acts: (i) union member Shazia Nosheen was detained by hotel management and pressured to sign a false statement on 25 February 2013 and is still on bail with her court case still pending; (ii) police arrested union officers and members on 13 March 2013 and charges were filed against 47 of them, including five members of the union Executive, for an illegal presence at the hotel, although, the union officers were legally employed by the hotel according to the terms of the reinstatement order; (iii) while stay orders were issued by the NIRC on 20 March 2013 prohibiting hotel management from taking any action against 62 union officers and members, only 7 have been allowed to return to work while 47 are still seeking to return to work after being refused entry by security guards.*
414. *The Committee expresses its concern at the latest allegations of anti-union actions at the hotel establishment and refusal to abide by court and NIRC orders. In particular, the Committee notes the allegations communicated by the complainant on the sequence of events between April 2013 and January 2015, which include the following: (i) on 1 April 2013, hotel management wrote to the union's General Secretary Ghulam Mehboob indicating that it refused to accept the NIRC order and denying that any workers were prevented from entering the hotel; (ii) on 9–10 April 2013, the union's General Secretary wrote to the hotel informing management that 62 workers were denied access to their workplaces and payment of their salaries in violation of NIRC orders; (iii) on 18 April 2013, workers once again informed the NIRC that they were denied entry to the hotel, were unable to perform their duties and were not receiving their salaries; (iv) the NIRC responded by instructing management to release these workers' salaries and to allow them to enter the premises to perform their jobs (the Assistant Director of Labour from the provincial ministry would accompany the workers into the hotel); (v) management of the hotel allowed 30 workers out of 62 to come inside the gate, but they were then told to sit in the parking area, where they remained for one week; (vi) on 26 April 2013, management applied to the NIRC to put these 30 workers on 'special leave'; the request was granted*

(the remaining 32 workers were not taken on duty, although the hotel management presented nothing in writing. Employment was terminated with regard to six of the 32 workers by verbal communication because they were third party contract workers (their cases are pending at the NIRC); (vii) on 31 October 2013, workers wrote to the NIRC stating that they were not being paid their full compensation (gratuities and bonuses) and, thereafter, the NIRC instructed the hotel management to pay the employees their full salaries, but management failed to implement the order, despite written complaints filed by workers; (viii) on 14 February 2014 and on 1 April 2014, workers who were stopped at the hotel gate from entering the premises each wrote separate letters to management protesting their lack of access in defiance of the stay orders and requesting legal entitlements due to them as employees. Management did not respond to these communications; (ix) on 19 May 2014, hotel management transferred 12 workers barred from entering the hotel to Pearl Continental facilities in Peshawar, Muzaffarabad and Rawalpindi. Eleven of these workers wrote to the NIRC on 3 June 2014; the NIRC stopped the transfer orders and requested a response from management.

- 415.** *The Committee further notes that, on 26 August 2014, a hearing on the case involving the hotel workers was held at the NIRC in the attendance of the General Manager of the hotel. The General Manager promised to resolve the outstanding issues within 15 days. At the NIRC hearing of 17 September 2014, the Human Resources Director stated that the General Manager had been transferred and that other issues were being discussed by the Board of Directors. NIRC sessions of 12 and 27 November were adjourned because management did not respond on the outcome of the meeting of the Board of Directors.*
- 416.** *On 16 December 2014, the NIRC ordered the payment of salaries to union officers and members who were reinstated by orders of the appeal tribunal and labour court. The hotel did not respond to a communication from the union demanding compliance with the decision. On 20 January 2015, 17 workers were barred from entering the hotel by security and 27 workers were put on 'special leave' to receive only the base salary rather than the full compensation to which they are legally entitled.*
- 417.** *In the absence of the Government's reply, the Committee recalls its previous recommendations and urges the Government to institute the necessary independent inquiries and to provide detailed information without delay. Finally, as regards the actions against union officers and members, including dismissals and refusing entry for reinstated workers, the Committee, noting the definitive decision rendered by the Sindh Labour Appellate Tribunal on 15 January 2013 and the numerous orders of the NIRC, including orders of 20 March 2013 and 31 October 2013, firmly expects that the Government will take all necessary steps for their immediate enforcement, thus ensuring the reinstatement of the workers in question, compensation for lost wages and any damages suffered. The Committee wishes to recall in this respect that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see **Digest**, op. cit., para. 17].*

The Committee's recommendations

- 418.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee deeply regrets that, 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 two urgent appeals [see 371st and 374th Reports, para. 6]. The Committee urges the Government to*

provide its observations on the complainant's serious allegations without further delay.

- (b) The Committee urges the Government to institute immediately an independent inquiry into the following allegations: (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. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up or redress measures taken.*
- (c) As regards the actions against union officers and members, including dismissals and refusing entry for reinstated workers, the Committee, noting the definitive decision rendered by the Sindh Labour Appellate Tribunal on 15 January 2013 and the numerous orders of the NIRC, including orders of 20 March 2013 and 31 October 2013, firmly expects that the Government will take all necessary steps for their immediate enforcement, thus ensuring the reinstatement of the workers in question, compensation for lost wages and any damages suffered.*
- (d) The Committee expects the Government to make efforts to obtain the comments of the company, via the employers' organization concerned, so that the Committee will be in a position to examine this case in full knowledge of the facts.*

CASE NO. 3049

DEFINITIVE REPORT

**Complaint against the Government of Panama
presented by
the National Federation of Associations and Organizations
of Public Employees (FENASEP)**

Allegations: The complainant organization alleges that, disregarding his status as a trade union official, the authorities transferred and subsequently dismissed the Deputy General Secretary of the National Federation of Associations and Organizations of Public Employees (FENASEP)

419. The complaint in the present case is contained in a communication from the National Federation of Associations and Organizations of Public Employees (FENASEP) dated 18 November 2013.

420. The Government sent its observations in communications dated 2 June and 27 October 2014.

- 421.** Panama has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 422.** In a communication dated 18 November 2013, FENASEP alleges that the Deputy General Secretary of FENASEP, Mr Edgardo Voitier, was transferred from one province (Colón) to another (Panamá) without being consulted and was subsequently dismissed by the National Customs Authority pursuant to Administrative Decision No. 398 of 12 November 2013, without any disciplinary reason or grounds for dismissal being given.
- 423.** The complainant organization explains that Mr Edgardo Voitier had been appointed as a clerk but worked as a customs inspector, and that the decision in question disregarded the protection that he was afforded in his capacity as Deputy General Secretary and for having been expressly appointed by FENASEP as one of the three officers who enjoy the privilege granted under section 185 of the Consolidated Text of Act No. 9 of 20 June 1994, as amended. According to the provision in question: "The following public servants, even if they do not occupy a public administration career position, can be dismissed only for the reasons established in the present act: (1) the General Secretary of any association or federation of public servants, from the time of his or her selection until three months after the conclusion of the term of office for which he or she was elected; and (2) up to three key officers of the executive boards or executive committees of associations or federations of public servants, appointed by the corresponding association or federation of public servants, for the duration of their appointment by their organization. The names of these officers will be provided to the General Directorate of the Public Administration ...". Having been notified on 13 November 2013 of the contents of Decision No. 398 of 12 November 2013, Mr Edgardo Voitier filed an application for reconsideration with the General Directorate of Customs on 18 November of the same year.

B. The Government's reply

- 424.** In its communication dated 19 June 2014, the Government states that, in dismissing Mr Edgardo Voitier on 12 November 2013, the appointing authority was exercising its discretionary power, since his appointment is based on the trust that his superiors have in him; and that the administrative procedure in question was carried out in compliance with all procedural safeguards. The Government also states that, in Administrative Decision No. 422 of 10 December 2013, a response was given to the application for reconsideration filed by Mr Edgardo Voitier, upholding the contested decision. Once the content of that decision had been notified, administrative channels were exhausted.
- 425.** In its communication dated 27 October 2014, the Government reported that the National Customs Authority had rehired Mr Edgardo Voitier as a project coordinator. The Government considered it important to highlight that the working conditions of the official in the position to which he was transferred are, in terms of remuneration, better than those he had prior to his dismissal. The Government also stated that an application for review filed by Mr Edgardo Voitier with the Supreme Court of Justice was pending a decision. It added that, as soon as the court's decision on the transfer is known, it will be accepted by the National Customs Authority.
- 426.** Furthermore, the Government reports that this matter has also been referred to the Committee for the Rapid Handling of Complaints relating to Freedom of Association and Collective Bargaining, which arose from the Panama Tripartite Agreement signed on

1 February 2012 and was officially established by Executive Decree No. 156 of 13 September 2013.

C. The Committee's conclusions

427. *The Committee notes that the complainant organization in this case alleges the violation of the protection afforded to certain trade union officials (trade union immunity) under the Consolidated Text of Act No. 9 of 20 June 1994, as amended, and more specifically relates to the transfer and subsequent dismissal of trade union official Mr Edgardo Voitier. The Committee notes the Government's statements that: (1) in dismissing Mr Edgardo Voitier, the appointing authority was exercising its discretionary power and the administrative procedure in question was carried out in compliance with all procedural safeguards; (2) subsequently Mr Edgardo Voitier was rehired by the National Customs Authority as a project coordinator, with better conditions in terms of remuneration than those he had previously; (3) an application for review filed by Mr Edgardo Voitier with the Supreme Court of Justice, regarding his transfer, is pending a decision; and (4) the case of this official has been referred to the Committee for the Rapid Handling of Complaints relating to Freedom of Association and Collective Bargaining. The Committee regrets the action of dismissal initially taken against this trade union official given that the Consolidated Text of Act No. 9 of 20 June 1994, as amended, affords protection to active trade union officials against dismissal and that the Government has provided no information on the specific events that led to the dismissal, and has merely referred to the administration's discretionary power to dismiss him. Taking into account that the subsequent rehiring of this official upheld the initial, previously decided transfer to another post, the Committee requests the Government to communicate the outcome of the application filed with the Supreme Court of Justice against his transfer and any agreement reached within the framework of the Committee for the Rapid Handling of Complaints relating to Freedom of Association and Collective Bargaining.*

The Committee's recommendation

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

The Committee requests the Government to communicate the outcome of the application filed with the Supreme Court of Justice against the transfer of Mr Edgardo Voitier to another post, and any agreement reached within the framework of the Committee for the Rapid Handling of Complaints relating to Freedom of Association and Collective Bargaining.

CASE NO. 2648

DEFINITIVE REPORT

Complaint against the Government of Paraguay presented by

- **the Trade Union of Workers and Employees of Cañas Paraguayas, SA (SOECAPASA)**
- **the Trade Union Confederation of Workers of Paraguay (CESITEP)**
- **the General Confederation of Workers (CGT) and**
- **the Paraguayan Confederation of Workers (CPT)**

***Allegations: The complainant organizations
allege acts of violence against a woman member***

429. The Committee examined this case at its May 2014 meeting and presented an interim report to the Governing Body [see 372nd Report, paras 498–507, approved by the Governing Body at its 321st Session (June 2014)].

430. The Government sent its observations in a communication dated 30 October 2014.

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

A. Previous examination of the case

432. In its previous examination of the case, in May 2014, the Committee made the following recommendations [see 372nd Report, para. 507]:

The Committee again strongly urges the Government to keep it informed with regard to the investigation carried out following the complaint lodged with the national police concerning the physical assault against the worker, Ms Juana Erenio Penayo.

433. The complainant organization had attached to its complaint a copy of the complaint lodged with the national police by the trade union member. According to the complaint she was pushed and punched.

B. The Government's reply

434. In its communication of 30 October 2014, the Government states that the complaint of physical assault lodged against a former manager of the company Cañas Paraguayas, SA (CAPASA) by Ms Juana Erenia Penayo de Sanabria is filed under police case file No. 1265/08 of 19 May 2008. The Government states that the Public Prosecutor's Office has no record of a complaint involving Ms Juana Erenia Penayo de Sanabria and/or the former manager, and specifies that by way of note No. 249/13 of 23 March 2013 the national police headquarters indicated that the complaint of physical assault did not give rise to a police investigation, as it was an offence punishable exclusively through private prosecution, in accordance with article 110(2) of the Criminal Code: "the criminal prosecution of the matter shall depend on a request by the victim ...". Furthermore, the Government has sent a copy of a note from the executive management of the company, indicating that Ms Juana Erenia Penayo de Sanabria is on the employee payroll and is working as a machine operator in the packaging section of the company.

C. The Committee's conclusions

- 435.** *The Committee recalls that the allegations that were still pending in this case related to the physical assault against a woman worker, member of the trade union, Ms Juana Erenia Penayo de Sanabria, by a former manager of the company (the complainant organization enclosed with its own complaint a copy of the complaint lodged with the national police, alleging violence at the workplace of a certain severity).*
- 436.** *The Committee notes the Government's statement that the member in question is still working at the company and that the complaint of physical assault lodged by Ms Juana Erenia Penayo de Sanabria against a former manager of the company (police case file No. 1265/08 of 19 May 2008) did not give rise to a police investigation, as it was an offence punishable exclusively through private prosecution, in accordance with article 110(2) of the Criminal Code "the criminal prosecution of the matter shall depend on a request by the victim ...". The Committee notes this information and understands that, while Ms Juana Erenia Penayo de Sanabria lodged a complaint with the national police, she did not lodge a criminal complaint with the judicial authority. Consequently, the Committee will not pursue its examination of this allegation.*

The Committee's recommendation

- 437.** *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. 3010

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

Complaint against the Government of Paraguay presented by

- the UNI Global Union and
- the Trade Union of Workers and Employees of Prosegur Paraguay, SA (SITEPROPASA)

Allegations: The complainant organizations allege anti-union dismissals and acts of persecution against striking workers by the Prosegur Paraguay, SA enterprise, as well as the refusal by the enterprise to negotiate a collective agreement on conditions of work

- 438.** The Committee examined this case at its March 2014 meeting, when it presented an interim report to the Governing Body [see 371st Report, paras 655–669, approved by the Governing Body at its 320th Session (March 2014)].
- 439.** The Government sent its observations in a communication dated 19 June 2014.
- 440.** Paraguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

441. In its previous examination of the case in March 2014, the Committee made the following recommendations [see 371st Report, para. 669]:

- (a) The Committee requests the Government to take urgent steps to ensure that an investigation is conducted without delay into all the allegations made in this case and, if these are found to be true, that the necessary remedy measures are taken. The Committee requests the Government to keep it informed in this regard.
- (b) Recalling that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, the Committee requests the Government to do everything in its power to promote collective bargaining between the parties. The Committee requests the Government to keep it informed of developments in this regard.

442. The complainants' allegations referred to in recommendation (a) are reproduced below [see 371st Report, paras 658– 661]:

- In their communication of 31 October 2012, SITEPROPASA and UNI Global Union report that, on 25 September 2011, a meeting of the constituent assembly of the trade union was called, at which the procedures for registering the trade union with the administrative labour authority were initiated. On 26 September, the trade union was registered in accordance with Resolution No. 62/2011 of the Office of the Deputy Minister for Labour of Paraguay. The enterprise Prosegur Paraguay, SA was informed of this by telegram. The complainants allege that once the enterprise had been informed of the establishment of the trade union, it dismissed the following workers, who it identified as promoters and organizers within the trade union: Mr Víctor Fretes, Mr Pío Antonio Hermoza, Mr Carlos Denis and Mr Esteban González, the press and public relations secretary. The complainants state that it was not possible to bring a case before the courts requesting their reinstatement, as they did not possess reliable documentation to corroborate their status as union organizers.
- The complainants add that, on 23 December 2011, the trade union informed the employer of its intention to promote the negotiation of a collective agreement on working conditions and submitted a draft that had been approved by the assembly of the trade union. According to the complainants, the enterprise employed delaying tactics and the trade union turned to the administrative authority, requesting it to mediate. They state that, on 2 May 2012, representatives of the enterprise and the trade union signed an initial agreement establishing a period of two months at the end of which both parties would sign the collective agreement on working conditions, once the negotiations were complete. The complainant organizations allege that, once the period of two months had elapsed, the agreement was never signed owing to the enterprise's unwillingness to continue with the negotiations.
- The complainants allege that, during the negotiating process, the following trade union members were dismissed: Mr Antonio Robledo, Mr Hermenegildo Areco, Mr Víctor Martínez, Mr Heriberto Ortiz and Mr Alfredo Ramírez. The complainants state that, in this context, the workers who were members of SITEPROPASA, satisfying all the legal requirements, decided to hold an eight-day strike from 18 to 26 July 2012 (the strike was extended to 4 August 2012). The complainants allege that the enterprise carried out acts of persecution and intimidation against the workers from the beginning of the strike. In particular, they state that several trade union leaders and members received telephone calls at home from employees of the enterprise, who informed their families that any worker who participated in the strike would be dismissed and would no longer be able to support their family. Furthermore, they allege that law enforcement officers were present at the picket line and marches, in order to intimidate the strikers.
- The complainants add that the enterprise recruited new workers during the strike, which was confirmed by the administrative labour authority. They indicate that, during the

strike, a tripartite meeting was held at the Ministry of Labour, which was attended by the Minister for Labour herself and at which the workers were requested and advised to end their protest action. According to the complainants, the highest authorities of the Ministry undertook to continue mediating between the parties and to guarantee that the workers would not suffer reprisals. However, the complainants allege that from that moment the authorities abandoned the workers who were members of the trade union to their fate. The complainants state that the workers decided to end the strike on 27 July 2012 and that, when they returned to work on 30 July, they were summoned individually by the enterprise and, in the absence of an adviser or legal representative, were informed of the enterprise's intention to have the strike declared unlawful (the enterprise submitted a request to the Fourth Circuit Labour Court of First Instance of the city of Asunción to that end), which would result in them being dismissed without pay. The complainants add that, in this context, the workers were pressured into signing an agreement that would terminate their employment contracts and which established the compensation to be paid, the notice period and other particulars, as if it were an unjustified dismissal or a justified withdrawal from service. The complainants allege that, in this way, the enterprise succeeded in dismissing 230 trade union members, and that those workers who had refused to sign the letters terminating their employment relationship were dismissed. The complainants state that it is worth noting that the enterprise subsequently withdrew on 20 August 2012 its request to have the strike declared unlawful. According to the complainants, a number of trade union leaders accepted compensation as "an agreement to terminate their employment relationship by mutual consent", which many only accepted after having been subjected to undue pressure. The complainants also allege that, when those dismissed workers seek employment in other enterprises in the sector, to their surprise, and despite meeting all the necessary criteria, they are informed that they cannot be hired because Prosegur Paraguay, SA has published a list containing the names of the striking workers.

B. The Government's reply

- 443.** In a communication dated 19 June 2014, the Government sent its observations, including the reports and decisions of the labour administrative authority, as well as the comments of the Prosegur Paraguay, SA enterprise on the allegations made by the complainants. The documents submitted relate to the following matters: the registration of the Trade Union of Workers and Employees of Prosegur Paraguay, SA (including Resolution No. 62 of 5 October 2011 and Resolution No. 1068 of 20 September 2012, Opinion No. 2320/11 of 30 December 2011 and Opinion No. 2655/11 of 15 November 2011, and the record of 29 November 2011); the dismissal of workers prior to the conclusion of negotiations (including form No. 2450/05 concerning the complaint of the failure to provide work made by Mr Heriberto Albino Ortiz and others dated 23 May 2012, the notification papers dated 23 and 25 May 2012, and the minutes of the meeting held on 29 May 2012 with the acting mediator); the registration of the collective agreement on conditions of work (CCCT) signed on 26 October 2012 (including Decision No. 1362 of 10 December 2012 and Decision No. 382 of 15 February 2013 issued by the labour administrative authority, and the text of the collective agreement); the declaration of 17 July 2012 concerning strike action from 18 to 26 July 2012 by the Trade Union of Workers and Employees of Prosegur Paraguay, SA (SITEPROPASA) (including the text of the declaration and the minutes of the tripartite meetings held on 17, 18 and 25 July 2012); the summary administrative procedure for the replacement of the striking workers (including Decision No. 407/12 of 28 August 2012 and Decision No. 1240/12 of 16 November 2012); and the dismissal of the workers who took part in the strike (including the response to the reinstatement claim submitted by a number of workers).
- 444.** The enterprise considers that the points made in the complaint do not correspond to the reality of the situation and states that it has respected the legislation in force, as well as adopting a conciliatory attitude. Moreover, in support of these statements, it points out that it pays the most competitive wages in the sector in Paraguay; a collective agreement is in

force; and harmonious labour relations are ensured in the enterprise, the workers enjoying all the rights conferred by the legislation and the collective agreement. The enterprise also emphasizes that, despite there being no trade union at the enterprise, the collective agreement was negotiated and signed by the representatives of almost the entire workforce, who had endorsed their representative status.

- 445.** With regard to the delay in the negotiation of the collective agreement relating to conditions of work, the Government sent information showing that the CCCT of 26 October 2012 between Prosegur Paraguay, SA and the representatives of the workers is in force. This agreement was approved, certified and registered by the labour administrative authority by means of Decision No. 1362 of 10 December 2012. Further to a request made by the enterprise dated 21 December 2012, the abovementioned decision was amended by Decision No. 382 of 15 February 2013 in order to reflect the fact that the agreement had been signed between the enterprise and representatives of all the non-unionized workers.
- 446.** With regard to the strike held in 2012, the Government sent a copy of the records of the tripartite meetings held on 17, 18 and 25 July 2012 as a result of the notification of strike action by SITEPROPASA and the subsequent extension thereof. The meetings were attended by representatives of the labour administrative authority, the enterprise and SITEPROPASA, but no consensus was reached. The enterprise indicates that there had been peaceful negotiations that year with a company trade union with a view to the adoption of a collective agreement, which was subsequently approved. The enterprise points out that it had been agreed that the parties would negotiate the terms of the collective agreement during May and June and that they would sign it, with the approved provisions, in July. However, instead of signing the final instrument, a minority of the workers at the office of Prosegur Paraguay, SA (20 per cent) belonging to the said union announced a strike, on the grounds that the enterprise was supposedly refusing to sign the collective agreement.
- 447.** As regards the replacement of the striking workers, the information supplied by the Government shows that, in the context of the summary administrative procedure ordered by the Office of the Deputy Minister of Labour and Social Security by means of Decision No. 407/12 of 28 August 2012, it was not established that services had been provided during the strike by workers who did not belong to the permanent workforce of the enterprise. Decision No. 1240 of 16 November 2012 ruled that, since there was insufficient evidence to warrant the imposition of penalties for alleged infringements of the labour laws, the summary administrative procedure against the enterprise should be dismissed.
- 448.** As regards the dismissal of the workers who took part in the strike, the enterprise explains that, on 27 July 2012, the trade union assembly decided to end the strike and that the workers opted individually to continue their employment contracts or negotiate the termination thereof with the enterprise. The enterprise adds that it paid the maximum compensation provided for under the labour legislation to the 175 workers who chose the second option. The contract termination agreements were settled and formalized the following day, in the presence of notaries and other work colleagues, according to the order of arrival of the workers. The enterprise states that it is untrue that legal or union advisers were not permitted to be present during the formalization of the agreements. Moreover, the information supplied by the Government includes a report dated 24 April 2014 from the Department for the Registration of Employers and Workers, in which there is no mention of the dismissal of workers from the enterprise.
- 449.** With regard to the request submitted by the enterprise to the Fourth Circuit Labour Court of First Instance on 26 July 2012 to have the strike declared unlawful, the enterprise states that the request was submitted after all the possibilities for reopening negotiations in

relation to the collective agreement had been exhausted. The enterprise indicates that once the dispute had been settled it withdrew its request, thereby showing that the dispute was forgotten and that it was keen to restore harmonious labour relations.

450. The enterprise declares that it has not committed any act of anti-union persecution before, during or after the abovementioned strike, nor has it engaged in any “blacklisting”, let alone any bribery of officials.

C. The Committee’s conclusions

451. *The Committee recalls that the present case is concerned with allegations that the Prosegur Paraguay, SA enterprise: (1) dismissed four founding members of the trade union when the enterprise was informed of the establishment thereof; (2) refused to comply with the initial agreement for negotiating a collective agreement relating to conditions of work; (3) dismissed five trade union members during the negotiation process; (4) replaced striking workers and carried out acts of intimidation against them (the complainants allege that the workers received phone calls at home informing their families that they would lose their jobs for taking part in the strike, and that law enforcement officers were present during the picketing and marches carried out by the strikers); (5) terminated the employment of 230 trade union members (who accepted compensation) who had taken part in the strike, after informing them that the strike would be declared unlawful and they would be dismissed without pay; and (6) sent a list containing the names of the striking workers to other enterprises in the sector, thereby preventing them from finding employment.*
452. *The Committee notes the observations sent by the Government and the comments from the enterprise in reply to the complainants’ allegations. In particular, the Committee takes note of the documents submitted in relation to: the registration of the Trade Union of Workers and Employees of Prosegur Paraguay, SA (SITEPROPASA); the dismissal of workers prior to the conclusion of negotiations; the registration of the collective agreement on conditions of work (CCCT) signed on 26 October 2012; the declaration of 17 July 2012 concerning strike action from 18 to 26 July 2012 by SITEPROPASA; the summary administrative procedure for the replacement of the striking workers; and the dismissal of the workers who took part in the strike.*
453. *The Committee observes, with regret, that the Government’s reply does not address the allegations made concerning the dismissal of four founding members of the trade union when the enterprise was informed of its establishment. The Committee therefore firmly urges the Government once again to provide information on the urgent steps that it requested the Government to take to ensure that an investigation is conducted into the allegations of dismissal and, if these prove to be true, that the necessary remedial measures are taken.*
454. *As regards the alleged dismissals of Mr Antonio Robledo, Mr Hermenegildo Areco, Mr Víctor Martínez, Mr Heriberto Ortiz and Mr Alfredo Ramírez during the negotiations for the collective agreement on conditions of work, the Committee observes that, even though the Government does not address the allegations made, the documents that it sent contain references to the complaint of the failure to provide work made on 23 May 2012 by Mr Heriberto Ortiz and others. The Committee further observes that, in the record of the meeting of 17 July 2012 (3 p.m.) between representatives of the labour administrative authority, the National Confederation of Workers (CONAT) and SITEPROPASA, at which no representative of the enterprise was present, it is noted that “... while the negotiations for the CCCT were still in progress, a number of workers were dismissed, including Mr Antonio Robledo, Mr Hermenegildo Areco, Mr Víctor Martínez, Mr Heriberto Ortiz and Mr Alfredo Ramírez; it was requested that they be reinstated once the required*

procedures had been completed ...". The Committee requests the Government to keep it informed of the outcome of the administrative procedure referred to above and to send a copy of any decision taken.

455. *As regards recommendation (b) in the previous examination of the case, and more specifically the delays in collective bargaining with the trade union SITEPROPASA since September 2011, the Committee notes that, according to the information supplied by the Government, the CCCT in force is the one that was signed on 26 October 2012 between the enterprise and the representatives of the workers, was approved, certified and registered by the labour administrative authority by means of Decision No. 1362 of 10 December 2012, and was subsequently amended by Decision No. 382 of 15 February 2013 in order to reflect the fact that the CCCT had been signed between the enterprise and representatives of all the non-unionized workers. The Committee observes that the complainants' allegation is not concerned with the collective agreement signed with representatives of the workers but with the fact that the enterprise had been previously negotiating with SITEPROPASA. In a request from the enterprise dated 21 December 2012, relating to an administrative decision (No. 1362 of 10 December 2012), which is included in the documents sent by the Government, it is stated that "... the representatives of the workers were appointed by an official letter dated 26 October 2012, in accordance with sections 326 and 327 and related provisions of the Labour Code; moreover, other workers on other dates endorsed the actions of the representatives through documents that were attached to this file ...". The Committee also observes that these (non-union) representatives were appointed after the end of the strike and the series of dismissals alleged by the complainants. The Committee wishes to recall that the Collective Agreements Recommendation, 1951 (No. 91), provides that: "For the purpose of this Recommendation, the term "collective agreements" means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representatives workers' organisations, or in the absence of such organisations, the representatives of the workers duly elected and authorised by them, in accordance with national laws and regulations, on the other." In this respect, the Committee has emphasized that the said Recommendation stresses the role of workers' organizations as one of the parties in collective bargaining. Direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. [See **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 945].*

456. *With regard to the replacement of the striking workers, the Committee notes that, according to the Government's information, in the context of the summary administrative procedure ordered by the Office of the Deputy Minister of Labour and Social Security, it was not established that services had been provided during the strike by workers who did not belong to the permanent workforce of the enterprise, and hence it was decided to dismiss the procedure against the enterprise. This being the case, the Committee will not pursue its examination of this allegation.*

457. *As regards the alleged termination of the employment contracts of 230 workers who took part in the strike, the Committee notes the enterprise's statement that on 27 July 2012 the trade union assembly decided to end the strike and that the workers opted individually to continue their employment contracts or negotiate the termination thereof with the enterprise; 175 workers (not 230 as alleged in the complaint) chose the second option (according to the enterprise, the termination of employment agreements were settled and formalized the following day, in the presence of notaries and other work colleagues; moreover, the enterprise denies that legal or union advisers were not permitted to be present during the formalization of the agreements). The Committee observes that the*

documents sent by the Government include the response to a court action for reinstatement brought by a number of workers (Mr Mario Arturo Lomaquíz Godoy and others), alleging deceit or extortion on the part of the enterprise. The Committee requests the Government to keep it informed of the outcome of these proceedings and to send a copy of any ruling issued.

- 458.** *In this respect, as regards the alleged acts of persecution against the striking workers, the Committee notes the enterprise's statement that it has not committed any act of anti-union persecution or engaged in any "blacklisting". The Committee urges the Government to carry out an administrative investigation into these allegations without delay, and, in the event that acts of anti-union discrimination have occurred, to impose the sanctions provided by legislation.*

The Committee's recommendations

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

- (a) The Committee observes with regret that the Government's reply does not address the allegations made concerning the dismissal of four founding members of the trade union when the Prosegur Paraguay, SA enterprise was informed of the establishment thereof. The Committee therefore firmly urges the Government once again to keep it informed of the urgent steps that it requested the Government to take to ensure that an investigation is conducted into the allegations of dismissal and, if these prove to be true, that the necessary remedial measures are taken.*
- (b) With regard to the alleged dismissals of five trade union members during the negotiations for the collective agreement on conditions of work, the Committee requests the Government to keep it informed of the outcome of the administrative procedure referred to above and to send a copy of any decision taken.*
- (c) With regard to the alleged termination of the employment contracts of 230 workers who took part in the strike, the Committee requests the Government to keep it informed of the outcome of these judicial proceedings (the court action brought by Mr Mario Arturo Lomaquíz Godoy and others) and to send a copy of any ruling issued.*
- (d) The Committee also urges the Government to carry out an administrative investigation into the allegations of persecutions against striking workers without delay and, in the event that acts of anti-union discrimination have occurred, to impose the sanctions provided by legislation.*

CASES NOS 3065 AND 3066

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

Complaint against the Government of Peru presented by

Case No. 3065
the Federation of Textile Workers of Peru (FTTP)

Case No. 3066
the Confederation of Workers of Peru (CTP)

***Allegations: Unlawful dismissal of a union
leader and other anti-union practices by various
enterprises in the textile sector***

- 460.** The complaint in Case No. 3065 is contained in communications dated 20 March and 10 June 2014 from the Federation of Textile Workers of Peru (FTTP). The Government sent its observations in communications of 20 June, 7 July, 11 August and 15 September 2014.
- 461.** The complaint in Case No. 3066, which concerns only one of the allegations in the Case No. 3065 complaint, is contained in a communication dated 24 March 2014 from the Confederation of Workers of Peru (CTP). The Government sent its observations in a communication of 1 July 2014.
- 462.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant organizations' allegations

- 463.** In the communications of 20 March and 10 June 2014 from the FTTP (Case No. 3065) and the communication of 24 March 2014 from the CTP (Case No. 3066), the complainants allege that various enterprises in the textile sector have engaged in anti-union practices.
- 464.** Both complainants allege that the enterprise INCA TOPS SA refused to grant trade union leave to and dismissed without just cause Mr José Abel López Motta, General Secretary of the Southern Federation of Textile Workers (FERETTEX SUR) and, until December 2013, General Secretary of the INCA TOPS SA Union and Solidarity trade union. They maintain that the dismissal of Mr López Motta, allegedly for 15 days of unexcused absence over a period of 180 working days, was a form of punishment for his success as a union leader. The dismissal letter sent to Mr López Motta claimed that he had used trade union leave to which he was not entitled, having requested it as the leader of FERETTEX SUR, a higher-level trade union that had not signed a collective agreement granting trade union leave to its leaders. However, Mr López Motta had requested trade union leave in accordance with the Collective Labour Relations Act, section 38 of which states that the legislation applicable to trade unions, including 30 days of trade union leave per year, also applies to federations and confederations. The complainants report that the labour inspectorate penalized the enterprise for refusing to grant Mr López Motta trade union leave because, in its view, the enterprise had not taken into account the fact that:

... the higher-level trade union is made up of lower-level trade unions. Thus, by participating in the former's activities, they are safeguarding the latter's interests. For this reason, it is reasonable for trade union leave to be granted as applicable; otherwise, the higher-level unions ... would never be able to perform their functions unless the collective agreement in force authorized the granting of trade union leave for specific higher-level activities

which would "clearly undermine the freedom of association" (infraction notice No. 017-2014-SDILSST-ARE). Similarly, in its subdirectorate Decision No. 230-2014-GRA/GRTPE-DPSC-SDILSST, the Arequipa regional government stated that

... even in the absence of a collective agreement between the enterprise and the higher-level trade union and where the granting of trade union leave to the latter's representatives has not been expressly agreed with the lower-level trade union, the right to organize is a fundamental right that the enterprise must respect by facilitating its exercise since, from a constitutional perspective, the absence of an agreement cannot deprive workers of the full exercise of their rights.

The decision fined the enterprise 24,624 Peruvian Nuevo Soles (PEN).

- 465.** The FTTP also alleges that the textile factory Pisco SAC refused to grant trade union leave to Mr Francisco Juvencio Luna Acevedo, leader of the factory's trade union and FTTP defence secretary and Regional Secretary for the southern region. The complainant federation also alleges that the enterprise failed to comply with administrative decisions ordering an across-the-board increase of PEN2.60 in the daily wage, issued in 2011 as the result of a strike.
- 466.** The FTTP further alleges that the manufacturing enterprise Romosa SAC engages in anti-union practices, including by harassing and discriminating against workers who perform trade union functions through wage cuts, requiring that their communications be made through a notary, installing audio-visual equipment only in the parts of the facility that are occupied by union members and changing working hours and shifts (the federation attaches a copy of labour inspectorate infraction notice No. 2500-2013, which states that the enterprise has committed a very serious offence by failing to inform the trade union organization of a change in working hours). In addition, the FTTP maintains that the enterprise refused to negotiate wage increases, introduce job improvements or appoint an arbitrator (the federation attaches a copy of the Ministry of Labour directorate order No. 014-2014-MTPE/1/20.2 of 10 March 2014, stating that the enterprise's refusal to deal with the list of demands for the period 2013–14 was groundless and requesting it to convene the negotiating committee).
- 467.** The FTTP alleges that the enterprise Tecnología Textil SA engages in anti-union practices. It ignores or fails to implement some provisions of the collective agreement that has been signed and fails to pay the textile bonus. It requires unionized workers to work in a separate area, sets up special shifts for them and places audio-visual equipment in their workplace; places restrictions on the breaks that they have traditionally been allowed to take; limits or denies them established allowances, customs and traditions; discriminates against them with regard to treatment and wages by differentiating between unionized and non-unionized workers. The complainant federation alleges that, in order to destabilize, disrupt and eliminate the trade union organization, the enterprise imposes restrictions, uses blackmail and offers advantages and benefits to workers who agree to withdraw from the trade union. It attaches documents rejecting requests for trade union leave and a request by the enterprise's trade union that the labour inspectorate consider this rejection as an obstruction of trade union activities.

468. With regard to legislation, the complainant federation submits additional complaints concerning Peruvian law. The FTTP calls for the repeal of sections 32, 33 and 34 of the Act on the promotion of non-traditional exports and section 80 of Legislative Decree No. 728, which authorizes the hiring of temporary workers in unlimited numbers and for unlimited time periods, undermining thousands of textile workers' right to job security and thus limiting their ability to unionize and exercise their right to bargain collectively.
469. Lastly, the FTTP mentions alleged labour law violations that are unrelated to the exercise of trade union rights.

B. The Government's reply

470. In its communications of 1 and 7 July and 15 September 2014, the Government sent comments by and information from the relevant enterprises (summarized below) and requested that the cases be declared closed.
471. Concerning the allegation that Mr López Motta's dismissal for unauthorized use of trade union leave constituted anti-union bias, the enterprise INCA TOPS SA states that the dismissal was duly substantiated and carried out in accordance with the regulations applicable to serious misconduct: 15 days of unexcused absence over a 180-day period. The enterprise notes that the default leave provisions contained in section 32 of the Collective Labour Relations Act apply only in the absence of an agreement. In that connection, it states that the agreement provides for the granting of 30 days of paid trade union leave to the general, defence and organization secretaries of its three trade unions. It maintains that it granted the trade union leave that Mr López Motta requested in his capacity as General Secretary of the Union and Solidarity trade union, one of the enterprise's three trade unions. However, the leave requests that he submitted in his capacity as General Secretary of FERETTEX and his request for 30 days of additional leave per year to take care of the federation's business were denied because the enterprise considered that the agreements made no provision for such leave. Despite having been denied leave, Mr López Motta missed work and was therefore dismissed for serious misconduct, as is established in and penalized under the labour laws. The enterprise emphasizes that, having been denied leave, Mr López Motta could have used a portion of the 30 days of annual leave to which he was entitled under an agreement in his capacity as General Secretary of the Union and Solidarity trade union. The Government observes that the enterprise has appealed against subdirectorate Decision No. 230-2014-GRA/GRTPE-DPSC-SDILSST, under which a fine was imposed for refusal to grant leave, and that this appeal is pending before the Directorate for Dispute Prevention and Resolution in the Arequipa Ministry of Labour. The Government also reports that Mr López Motta has brought an *amparo* (protection of constitutional rights) appeal against his dismissal. The Government therefore concludes that both parties are exercising their rights and that it will be for the courts to determine whether there was a just cause for dismissal.
472. With regard to the allegation that the textile factory Pisco SAC refused to grant trade union leave, the enterprise notes that the current agreement provides for granting of the trade union leave envisaged in the Collective Labour Relations Act and states that it has granted such leave in accordance with domestic law. This was confirmed by the labour inspectorate in its report on inspection activities (inspection order No. 121-2013-JZ-PIS) of 20 September 2013, which states that the enterprise received requests for trade union leave from Mr Luna Acevedo and granted them, making no mention of the violation alleged by the FTTP. Concerning the administrative decisions issued in 2011 as the result of a strike, the Government provides detailed information on the judicial proceedings that led to the repeal of these decisions and states that the enterprise's union has brought an appeal against their repeal, which is currently pending before the Supreme Court.

- 473.** In response to the allegation that the manufacturing enterprise Romosa SAC engages in anti-union practices targeting unionized workers, the enterprise states, with regard to the alleged wage cuts, that the remuneration of unionized workers was decreased at the express request of the trade union's members, who wished to work only eight hours per day and not to be asked to work overtime. The enterprise also states that the majority of the workers (92, including two trade union members) were in favour of the change in working hours; 36 workers, all of them members of the union, opposed it. The enterprise maintains that communication through a notary was not, in principle, required; it felt compelled to adopt that practice because many union members refused to accept communications. Concerning a case that had been documented by the FTTP as an example of harassment of a trade union member, the enterprise stated that, as a penalty, the worker in question had been sanctioned with one day without pay after being found reading a newspaper during working hours rather than carrying out the assigned tasks. With respect to the refusal to increase wages and introduce job improvements pursuant to two lists of as-yet-unresolved union demands and to appoint an arbitrator for optional arbitration, the enterprise states that the Ministry of Labour itself had ordered the issuance of economic and financial directives on the enterprise's situation, which stated that the enterprise had been suffering losses that made it impossible for it to increase wages.
- 474.** Concerning the allegation that the enterprise Tecnología Textil SA engages in anti-union practices by discriminating against unionized workers, failing to implement the agreement and refusing to grant trade union leave, the enterprise states that on 6 January 2014, after months of negotiations with the trade union, an agreement providing for immediate and substantive economic improvements was reached. It also states that the textile bonus established in the collective agreement has been paid, as confirmed by the labour inspectorate (subdirectorate Decision No. 712-2013-MTPE/1/20.45, which, to the enterprise's knowledge, has not been called into question by the complainant federation). According to the enterprise, its premises are undivided and there are no special shifts, restrictions on breaks or similar situations, nor has the labour inspectorate mentioned anything of the kind during its visits. With respect to the alleged refusal to grant trade union leave, the enterprise states that union representatives are granted leave as established in the Collective Labour Relations Act and its implementing regulations and recalls that, according to section 32 of the Act, "... employers shall only be required to grant leave for events at which attendance is compulsory". It goes on to state that, where leave has been denied, it was because the trade union had failed to identify and substantiate the events at which its representatives' attendance was compulsory and that the labour inspectorate has yet to comment on any of the union's requests for verification.
- 475.** With respect to the FTTP allegations calling for repeal of sections 32, 33 and 34 of the Act on the promotion of non-traditional exports and section 80 of Legislative Decree No. 728, the Government, in its communication of 20 June 2014, reports that the draft legislation for the repeal of those provisions is currently before Congress pending the issuance of an opinion by the Labour and Social Security Committee. The Government states that, as the issue is a complex one, it is being examined in greater depth and opinions and technical reports have been requested from the relevant institutions. At the current stage, information is being gathered with a view to preparation of a preliminary opinion for discussion by the Labour and Social Security Committee. Concerning the federation's legislative allegations, in its communication of 11 August 2014, the Government states that the legislative instruments in question raise no issues of compatibility with the ILO Conventions on freedom of association that have been ratified by Peru.

C. The Committee's conclusions

476. Concerning the alleged anti-union dismissal of Mr López Motta for unauthorized use of trade union leave, the Committee notes that, according to the enterprise INCA TOPS SA, the dismissal was substantiated in accordance with the current legislation governing unauthorized absences and that the representatives of higher-level trade union organizations are not entitled to trade union leave because it is not envisaged in the trade unions' agreements with the enterprise. The Committee observes that, according to the enterprise, when his request for trade union leave was denied, Mr López Motta could have used a portion of the 30 days of annual leave to which he was entitled under an agreement in his capacity as General Secretary of one of the enterprise's trade unions. It also observes that, according to section 32 of the Collective Labour Relations Act, in the absence of an agreement, additional leave is "considered leave without pay or other benefits". The Committee notes that the labour inspectorate fined the enterprise for refusing to grant trade union leave. The Committee recalls that federations and confederations "should ... enjoy the various rights accorded to first-level organizations, in particular as regards their freedom of operation, activities and programmes" [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 730]. The Committee also recalls that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see **Digest**, op.cit., para. 940]. It notes that the parties' complaints are under review by the competent authorities and requests the Government to send the administration or judicial decisions issued in relation to this matter.
477. With respect to the allegation that the textile factory Pisco SAC refused to grant trade union leave, the Committee notes that both the enterprise and the labour inspectorate deny the allegations and state that trade union leave was granted in accordance with the law. Concerning the administrative decisions issued in 2011, the Committee requests the Government to keep it informed of the outcome of the appeal brought by the Pisco SAC workers' union, which is currently before the Supreme Court.
478. The Committee observes the complainant federation's allegation that the manufacturing enterprise Romosa SAC engages in anti-union discrimination and refuses to enter into negotiations. The Committee takes note of the information provided by the enterprise, particularly with regard to its financial situation (losses) and the labour inspectorate resolutions stating that a very serious offence – failing to inform the trade union organization of a change in working hours – had been committed and that the enterprise's refusal to deal with the list of demands for the period 2013–14 was groundless. The Committee emphasizes the importance of consultation between enterprises and trade unions on labour issues and industrial relations matters of mutual interest. The Committee encourages the parties to negotiate in good faith and hopes that all pending demands can be dealt with as soon as the financial situation improves.
479. The Committee observes the complainant federation's allegation that the enterprise Tecnología Textil SA, engages in anti-union practices by discriminating against unionized workers and refusing to grant trade union leave. The Committee takes note of the information provided by the enterprise concerning the labour inspections carried out and the conclusion of a new collective agreement and its explanation that, where leave has been denied, it was because the trade union had failed to identify and substantiate the events at which its representatives' attendance was compulsory, for which leave must be granted under domestic law.

- 480.** *The Committee notes the FTTP allegations concerning the use of audio-visual equipment for anti-union purposes. It observes that the Government has not replied to these allegations and, in the light of their generic nature, requests the FTTP to provide further detailed information in this regard.*
- 481.** *The complainant federation calls for the repeal of certain legal provisions (sections 32, 33 and 34 of the Act on the promotion of non-traditional exports and section 80 of Legislative Decree No. 728). The federation considers that, by allowing the unlimited use of short-term contract arrangements, these provisions restrict workers' rights and limit the exercise of their trade union rights. As regards allegations of a legislative nature, the Government states that the legislative instruments under consideration do not raise any compatibility issue with the ILO Conventions on freedom of association ratified by Peru. The Committee recalls that it has invited the Government "to examine, with the most representative workers' and employers' organizations, a way of ensuring that the systematic use of short-term temporary contracts in the non-traditional export sector does not become in practice an obstacle to the exercise of trade union rights" and has requested the Government to keep it informed in that respect [see 357th Report of the Committee, Case No. 2675, para. 875]. Furthermore, in its previous (March 2015) report, the Committee recalled "that fixed-term contracts should not be used deliberately for anti-union purposes" and that "in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights" [see 374th Report of the Committee, Case No. 2998, para. 723]. The Committee reiterates these conclusions and requests the Government to keep it informed of the legislative process regarding the draft legislation for the repeal of the legislation challenged by the complainant federation.*

The Committee's recommendations

- 482.** *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 send it the administrative and judicial decisions concerning the enterprise INCA TOPS SA.*
 - (b) The Committee requests the Government to keep it informed of the outcome of the appeal brought by the Pisco SAC workers' union, which is currently before the Supreme Court.*
 - (c) The Committee, stressing the importance of consultation between enterprises and trade union organizations on labour issues and industrial relations matters of mutual interest and of encouraging and promoting the full development and utilization of machinery for collective bargaining, encourages Romosa SAC and the trade union to negotiate in good faith on all pending demands as soon as the financial situation improves.*
 - (d) The Committee requests the FTTP to provide further detailed information with regard to the allegations that audio-visual equipment is being used for anti-union purposes.*

- (e) *The Committee, recalling that fixed-term contracts should not be used deliberately for anti-union purposes and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights, requests the Government to keep it informed of the legislative process regarding the draft legislation for the repeal of sections 32, 33 and 34 of the Act on the promotion of non-traditional exports and section 80 of Legislative Decree No. 728.*

CASE NO. 3004

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

**Complaint against the Government of Chad
presented by
the Union of Trade Unions of Chad (UST)**

Allegations: The complainant organization alleges the harassment of its officials, in particular the transfer of trade union officials and the arrest and conviction of its President, Vice-President and General Secretary, as a punishment for strike action in the public service

- 483.** The Committee last examined this case at its June 2014 meeting, when it presented an interim report to the Governing Body [see 372nd Report, paras 535–574, approved by the Governing Body at its 321st Session (June 2014)].
- 484.** The Government sent partial observations in a communication dated 28 May 2015.
- 485.** Chad has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

- 486.** At its June 2014 meeting, the Committee made the following recommendations [see 372nd Report, para. 574]:
- (a) The Committee requests the Government to ensure the respect of the principles that it recalls in relation to the freedom of expression of employers' and workers' organizations, and to keep it informed of any appeals initiated against the convictions handed down in September 2012 against the officials of the Union of Trade Unions of Chad and to indicate any final decision rendered in this regard.
 - (b) The Committee notes with regret that, since its last recommendation on the need to amend Act No. 008/PR/2007 regulating the exercise of the right to strike in public services, there has been no reported progress. It is bound to, once again, request the Government to take the necessary steps to review, in consultation with the social partners concerned, its legislation relating to the exercise of the right to strike in public

services (Act No. 008/PR/2007 of 9 May 2007) to ensure the determination of a minimum service in accordance with the principles of freedom of association. The Committee urges the Government to keep it informed of the work of the Ad Hoc Negotiation Committee (CAN) in this regard.

B. The Government's reply

487. In its communication dated 28 May 2015, the Government provides information on the results of the appeals initiated against the convictions handed down in September 2012 against the officials of the Union of Trade Unions of Chad (UST), namely the extracts of Court Order No. 042/2013 of 4 June 2013 of the Court of Appeal of N'Djamena and of the Ministerial Order No. 175/PR/PM/MSP/SE/SG/SCB/HRD/2013 on the annulment of orders with regard to the concerned parties.

488. In this regard, the Court Order No. 042/2013 of 4 June 2013 of the Court of Appeal of N'Djamena overrules the convictions of the three leaders of the UST, specifically Mr Michel Barka, Mr Younous Mahadjir and Mr François Djondang. As to the abovementioned Ministerial Order, it reassigns UST officials in their former positions, including Mr Younous Mahadjir, Mr François Djondang, Mr Montana N'Dinaromtan, Ms N'Doukologone Naty Rachel and Ms Laoumaye Djerane.

C. The Committee's conclusions

489. *The Committee notes the partial observations of the Government which include information on the results of the appeals against the convictions initiated against the officials of the UST, namely the extracts of Court Order No. 042/2013 of 4 June 2013 of the Court of Appeal of N'Djamena and of Ministerial Order No. 175/PR/PM/MSP/SE/SG/SCB/HRD/2013 on the annulment of orders with regard to the concerned parties. The Committee notes in this regard that the Court of Appeal overruled the convictions of the UST leaders and the Ministerial Order reassigned officials of the UST in their former positions.*

490. *The Committee would like to recall that Act No. 008/PR/2007 of 9 May 2007, regulating the exercise of the right to strike in public services, has also been the subject of criticism in an earlier case (Case No. 2581). On that occasion, the Committee recalled the principles of freedom of association relating to the exercise of the right to strike in public services and the determination of a minimum service. During its previous examination of the present case, the Committee also noted with regret that this legislative aspect was being monitored by the Committee of Experts on the Application of Conventions and Recommendations without any reported progress. Noting with regret that the Government has not provided any new information on this matter, the Committee firmly expects the Government to take the necessary steps to review this Act, in consultation with the social partners, and draws this legislative aspect of the present case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendation

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

The Committee notes with regret that, since its last recommendation on the need to amend Act No. 008/PR/2007, regulating the exercise of the right to strike in public services, there has been no reported progress. It firmly expects the Government to take the necessary steps to review this Act, in

consultation with the social partners concerned, to ensure determination of a minimum service in accordance with the principles of freedom of association and, in light of the Government's ratification of Conventions Nos 87 and 98, requests it to provide detailed information to the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 3105

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

Complaint against the Government of Togo presented by

- **the International Organisation of Employers (IOE) and**
- **the National Council of Employers of Togo (CNP)**

***Allegations: The complainant organizations
denounce the Government's incapacity to
prevent obstruction and interference with
respect to the election of representatives to the
National Council of Employers of Togo (CNP)***

- 492.** The complaint is contained in communications dated 26 September and 12 December 2014 from the International Organisation of Employers (IOE) and the National Council of Employers of Togo (CNP).
- 493.** The Government indicated in a communication dated 8 January 2015 that the examination of the complaint was in progress and that the corresponding replies would be sent as soon as possible. To date, no information has been received from the Government.
- 494.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on two occasions. At its March 2015 meeting [see 374th Report, para. 6], the Committee issued an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in due time.
- 495.** Togo 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

- 496.** In a communication dated 26 September 2014, the complainant organizations indicate that the CNP was established in 1963 to represent the private sector both in Togo and internationally. It is an umbrella federation for 16 professional associations representing enterprises in industry, commerce, the services sector, construction and public works, SMEs/SMIs and all other sectors of economic activity in the country. The CNP also lobbies on economic and social policy matters, and is a body that provides coordination, training, information and action for the private sector. The CNP has been a member of the

IOE since 1997. Lastly, the CNP is also a member of the Federation of West Africa Employers' Associations (FWAEA), a regional employers' organization whose mission is to defend and promote its members' interests. The complainants explain that the FWAEA has been involved in the present case and has attempted to act as a mediator in the dispute, but without success.

- 497.** The complainants denounce the Government's incapacity to prevent obstruction to the right of CNP members to freely elect their representatives, the consequence of which has been to prevent the organization from organizing its activities and formulating its programme of action. The complainants report the situation described below.
- 498.** On 20 September 2013, the members of the CNP were called upon to elect a new management board, for a five-year term, during an ordinary general assembly. In view of these elections and in order to ensure transparency and impartiality, the management board had decided on 10 July 2013 to set up an ad hoc commission responsible for organizing and supervising the elections of the new board. At the general assembly, after verifying the existence of a quorum, the elections took place in the presence of the ad hoc commission, composed of a president and three members. The elections were held in the presence of a bailiff from the Lomé Appeal Court, whose presence during the work – from the counting of votes for the candidates to the announcement of the results – ensured the transparency of the elections. The bailiff drew up records of the work done by the electoral commission.
- 499.** The general assembly democratically re-elected Mr Kossivi Naku to the presidency of the CNP; the second-placed candidate for this post was Mr Ahlonko Bruce, who received six votes compared to eight for Mr Naku in the second round. Mr Bruce congratulated Mr Naku on his victory. The general assembly also democratically elected the other members of the management board, namely the vice-president and the treasurer.
- 500.** However, on 6 January 2014, more than three months after the election of Mr Naku and without having lodged any protest before or during the elections, Mr Bruce applied to the interim relief judge at the Court of First Instance of Lomé to annul the elections of 20 September 2013, in which, he claimed, irregularities had taken place. On 10 January 2014, the interim relief judge issued a ruling cancelling the disputed elections and ordered an interim administration to be established for the CNP.
- 501.** On 10 January 2014, Mr Naku appealed against the ruling issued by the interim relief judge and requested a suspension of execution. His appeal was granted. On 12 March 2014, the Lomé Appeal Court issued a ruling recognizing the Court of First Instance's lack of jurisdiction in the matter and overturned its judgment.
- 502.** On 12 March 2014, Mr Bruce applied to the Court of First Instance of Lomé (First Chamber) to request invalidation of the elections which he considered to be flawed with irregularities and call for the appointment of an interim administration mandated to convene a new electoral general assembly. In its judgment of 4 April 2014, further to its substantive examination, the court revealed irregularities in the election of the management board. The court therefore declared the elections of 20 September 2013 null and void and appointed an interim administrator for the CNP (Mr Papaly) with the mandate of holding a new general assembly within 18 months. The court ordered the provisional enforcement of its judgment. On 14 April 2014, an order for the sealing (closure) of the CNP offices was notified to Mr Naku, a measure that was immediately enforceable.
- 503.** According to the complainants, none of the CNP member organizations challenged the results of the elections of 20 September 2013 or appealed to the judicial authority regarding this matter. Moreover, the 16 professional associations belonging to the CNP signed a statement on 30 April 2014 certifying that the elections of 20 September 2013 had

been properly conducted, transparent and accepted by all CNP members and calling for the result thereof – namely, the election of Mr Naku to the CNP presidency – to be respected.

- 504.** The complainant organizations add that the FWAEA, represented by its executive secretary, visited Lomé from 6 to 8 May 2014 to hear all the parties to the dispute and finally issued a report expressing the view that the judgment of 4 April 2014 declaring the elections null and void was “extremely damaging to the functioning of the CNP and even constituted a clear obstacle to the functioning of the CNP”.
- 505.** The complainants object that, further to the appointment of Mr Papaly as interim administrator, he was accredited by the Government as an Employers’ delegate to the International Labour Conference (ILC) in May–June 2014 instead of Mr Naku, who was therefore unable to represent the CNP at the Conference and lodged a complaint to that effect with the ILC Credentials Committee. With a view to his participation as CNP representative to the IOE General Council, where his presence was crucial as regards ensuring that the needs of the CNP were taken into account in the formulation of the IOE’s annual programme of action, Mr Naku went to Geneva on 27 May 2014. He was then able to participate in the work of the ILC, at his own expense, as an observer accredited by the IOE but without the right to vote.
- 506.** The complainants denounce the fact that the appointment of an interim administrator responsible for organizing a new electoral general assembly within 18 months has had the effect of bringing the activities of the CNP to a complete standstill, and the CNP is no longer able to implement its programme or protect or promote its members’ interests.
- 507.** The complainants affirm that Mr Bruce submitted his candidacy for the position of president of the CNP despite the conflict of interest between his public service role and the need to ensure the independence of the CNP vis-à-vis the public authorities. However, this type of conflict of interest is not covered by any specific regulations at the national level, thereby leaving the State with the capacity to interfere in the affairs of professional organizations.
- 508.** Since 2012 Mr Bruce has been the traditional chief of the town of Aného, a title and position which, under section 1 of Act No. 2007-002 of 8 January 2007, depend directly on the Ministry of Territorial Administration, Decentralization and Local Communities and come within the budget of the State. In the performance of his duties, Mr Bruce must conduct himself “as the worthy representative of the people and show loyalty to the State” (section 24 of Act No. 2007-002). According to the complainants, these provisions clearly show that the role of traditional chief and the presidency of the CNP are incompatible.
- 509.** Despite the fact that the Minister of Territorial Administration affirmed that “as the legislation stands, there is no incompatibility or prohibition preventing a traditional chief from exercising responsibility, electoral or otherwise, in an employers’ or workers’ organization”, such incompatibility was underlined by the ad hoc commission responsible for holding and supervising the elections of the new management board, which informed Mr Bruce accordingly by letter on 9 September 2013. That letter reiterates the stance adopted on 2 September 2013 by the official in charge of employers’ activities of the Decent Work Technical Support Team at the ILO Office in Dakar, as follows: “The credibility of an employers’ organization and its capacity for playing its role are based on its independence vis-à-vis the national authorities with which it has to negotiate. It is therefore essential to avoid any conflict of interest on the part of its executive body. Certain functions such as being a public servant are thus incompatible with the office of president and even of member of the management board.”

- 510.** The complainants regret that the judge of the Court of First Instance of Lomé (First Chamber) made no reference to the question of incompatibility between the public office held by Mr Bruce and his candidacy for the position of CNP president, which, however, is of fundamental importance in settling the dispute.
- 511.** The complainants observe that Mr Bruce accuses the ad hoc commission responsible for holding and supervising the elections to the new management board of having been directed by Mr Naku, of having been neither impartial nor independent and of having “created inequality and a complete imbalance among the candidates and voters”. However, they note that none of the CNP member organizations complained, formally or informally, about the course of the elections, which suggests that the work of the commission was beyond reproach.
- 512.** Lastly, the complainants express their surprise at the analysis of the Court of First Instance of Lomé (First Chamber) concerning the presence of the bailiff, who validated the work of the electoral commission and the election procedure by means of records and who the court considers in its judgment as having “played a role of auxiliary judicial officer responsible, *inter alia*, for establishing a record of certain situations or events”. The purpose of his presence was to record the fact that those operations took place, regardless of whether they were properly conducted. According to the complainants, such arguments remove any importance or value from a bailiff’s presence during the electoral commission’s work.
- 513.** In a communication dated 12 December 2014, the complainants object to further obstruction by the authorities of the CNP members’ right to freely elect their representatives and to secure observance of the organization’s constitution and rules. Hence the complainants denounce the ruling issued by the Lomé Appeal Court (No. 232/2014) on 8 October 2014, in which the court considers that the judgment of the Court of First Instance “did not justify [the interim administration headed by Mr Papaly] in terms of the appointment of its members and the duration assigned to it; that there is no legal structure underpinning this appointment, which therefore lacks any legal basis; that his presence at the head of CNP Togo is not justified”. Thus the court partially grants Mr Naku’s appeal by appointing “the eldest of the presidents of the CNP Togo member associations as interim administrator of the employers’ association”; “the youngest of the presidents of the CNP Togo member associations as interim general secretary”; and “the vice-president of the Lomé Appeal Court to appoint the officers of the interim administration within 12 days from the pronouncement of the decision”. The court stipulates that the mandate of the interim administration is to hold an electoral general assembly within three months from the date of its establishment.
- 514.** On 17 October 2014, the vice-president of the Appeal Court called a meeting with the presidents of the 16 professional associations comprising the CNP, as requested by the court. As a result of the meeting, a president and a general secretary of the interim administration were appointed. However, the complainants consider that this represents a further attempt at interference by the public authorities in the running of the CNP.
- 515.** Further to this ruling and with a view to finding a solution to the delicate situation of the CNP, an extraordinary general assembly, convened on 22 October 2014, which was attended by 15 of the 16 presidents of the professional associations comprising the CNP, adopted the following resolutions:
- the establishment of an election steering and organization committee with the mandate of updating the CNP rules and holding elections within three months;

- the management of day-to-day matters remains within the competence of the management board, which undertakes to hand over authority once the new members have been elected. Its mandate will end on the actual day of the elections;
- all the participants expressed their gratitude to Mr Naku for his wisdom and know-how in conducting the extraordinary general assembly, which went ahead smoothly;
- complete authority is given to the bearer of the present resolutions to make proper use of them.

516. The complainants explain that, at the extraordinary general assembly, Mr Naku declared publicly that he would not stand as a candidate for the elections to the CNP executive bodies.

517. By way of conclusion, the complainants request the Committee on Freedom of Association to urge the Government to take the necessary measures to:

- ensure that the results of the 20 September 2013 elections and all requests from CNP members are honoured;
- reopen the CNP offices to enable the management board and its elected president to perform their duties;
- reimburse Mr Naku for the expenses he was obliged to incur to participate in the ILC from 26 May to 12 June 2014;
- ensure that there is no reoccurrence of this kind of situation, which seriously hampers the activities of the CNP and the formulation of its programme of action.

B. The Committee's conclusions

518. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainants' allegations, despite being requested several times, including through an urgent appeal, to present its comments and observations on this case. In view of the seriousness of the allegations concerning the capacity of employers' organizations to function and conduct their activities on behalf of their members, the Committee deeply regrets that the Government has not taken any action since indicating its intention in January 2015 to reply quickly to the present complaint. The Committee urges the Government to be more cooperative in the future.*

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

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

521. *The Committee notes that the present case deals with alleged interference by the public authorities in the election of representatives to the National Council of Employers of Togo*

(CNP). The information provided by the complainant organizations shows that the CNP held elections for a new management board at an ordinary general assembly on 20 September 2013. An *ad hoc* commission responsible for holding and supervising the elections of the new board was set up for this purpose and a bailiff drew up records of the work of the general assembly and the running of the elections. Hence, according to the complainants, the general assembly democratically elected all the members of the management board, including Mr Kossivi Naku as CNP president. The Committee notes, however, that three months after the elections the second-placed candidate for the CNP presidency, Mr Ahlonko Bruce, who was defeated in the second round but did not voice any opposition to the results at the time, applied to an interim relief judge on 6 January 2014 to request invalidation of the elections of 20 September 2013, in which he considered irregularities to have taken place. The interim relief judge granted Mr Bruce's request and declared the elections invalid by a ruling of 10 January 2014. However, this ruling was then overturned by the Lomé Court of Appeal, to which the CNP had applied, on the grounds that the relief judge had no jurisdiction and the parties were referred back to the Court of First Instance of Lomé. Mr Bruce then applied to the Court of First Instance of Lomé (class one) to request invalidation of the elections and call for the appointment of an interim administration mandated to convene a new electoral general assembly. The Committee observes that by a judgment of 4 April 2014 the court established serious irregularities, which were contrary to the organization's own constitution, in the holding of the elections of 20 September 2013, declared those elections null and void, and appointed an interim administrator (Mr Papaly), a general secretary (Mr Adjogah) and a treasurer (Mr Aziabu) with the task of holding a new ballot within 18 months from the date of the judgment.

522. The Committee notes that, further to the judgment of the Court of First Instance of Lomé (First Chamber), the 16 professional associations belonging to the CNP held an extraordinary meeting on 30 April 2014 at the end of which they signed a declaration certifying that the elections of 20 September 2013 had been conducted properly and transparently and been accepted by all CNP members and called for their outcome to be respected.
523. Finally, the Committee notes the communication of 12 December 2014 from the complainants, according to which, in its ruling issued on 8 October 2014, the Lomé Appeal Court, to which the CNP applied, considered the court of first instance ruling establishing an interim administration for the CNP as lacking any legal basis and decided to appoint an interim administration emanating from the organization. Since the constitution of the organization does not include provisions on the invalidation of elections, the court decided to apply the criterion of age, appointing the eldest of the presidents of the CNP member associations as interim administrator and the youngest as general secretary. The Committee notes that the complainants were not satisfied with this decision, seeing it as further obstruction by the authorities of the CNP's right to elect its own leaders and organize the way it is run according to its own constitution. In the wake of this ruling, the CNP held an extraordinary general assembly as a result of which the following resolutions concerning the holding of new elections were adopted: (i) the establishment of an election steering and organization committee with the mandate of updating the organization's rules and holding elections within three months; (ii) the management of day-to-day matters remains within the competence of the management board, which undertakes to hand over authority once the new members have been elected. Its mandate will end on the actual day of the elections.
524. As regards internal disputes within a professional organization, the Committee recalls that it has no competence to adopt any position regarding the internal disputes of a workers' or employers' organization unless the Government has intervened in a manner that might affect the exercise of trade union rights and the normal functioning of the organization in

question. In this regard the Committee has frequently recalled the principle whereby, in the case of internal dissention within one and the same trade union federation, by virtue of Article 3 of Convention No. 87, the only obligation of the government is to refrain from any interference which would restrict the right of the workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes, and to refrain from any interference which would impede the lawful exercise of that right. Lastly, in cases of internal dissentions within a trade union organization, the Committee has regularly emphasized that judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling the question of the leadership and representation of the organization concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 1116 and 1117].

525. In the present case, the Committee observes that the court of first instance in question issued a ruling on 4 April 2014 invalidating the elections of 20 September 2013 on the grounds of violations of certain rules in the constitution of the organization concerning the election of members of the management board, unconnected with the election of the president. The Committee further notes that the appeal court did not call into question the grounds for invalidating the elections but only the legal basis for the appointment of an interim administration for the CNP during the transition period prior to the holding of new elections.
526. Without engaging in any substantive analysis of the decisions rendered, the Committee notes that in the present case the dispute was settled by the judicial authority, which sought to appoint an interim administration with a view to new elections being held quickly. In this regard, the Committee has always pointed out that judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling questions concerning the management and representation of the trade union federation concerned. Another possible means of settlement would be to appoint an independent arbitrator to be agreed on by the parties concerned, to seek a joint solution to existing problems and, if necessary, to hold new elections [see **Digest**, op. cit., para. 1124]. If the solution proposed by the justice system does not suit the parties to the dispute, the Committee invites them 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 CNP members to choose their representatives freely and quickly, in accordance with the principles of freedom of association recalled above.
527. With regard to the allegations from the complainants that Mr Bruce submitted his candidacy for the post of CNP president despite the conflict of interest between his public function as traditional chief of the town of Aného since 2012 and the need to ensure the independence of the CNP vis-à-vis the public authorities, the Committee notes that the complainants consider that the title of traditional chief of the town of Aného depends directly on the Ministry of Territorial Administration, Decentralization and Local Communities and comes within the budget of the State, in accordance with section 1 of Act No. 2007-002 of 8 January 2007. Under section 24 of Act No. 2007-002, in the performance of his duties, Mr Bruce must conduct himself "as the worthy representative of the people and show loyalty to the State". This obligation makes his office incompatible with that of CNP president, according to the complainants. The complainants regret that the judge of the Court of First Instance of Lomé (First Chamber) made no reference to the question of incompatibility between the public office held by Mr Bruce and his candidacy for the position of CNP president, which, however, is of fundamental importance in settling the dispute.

- 528.** *The Committee recognizes the need for an employers' organization to ensure its credibility and its independence vis-à-vis the national authorities, with which it has negotiated, by avoiding any conflict of interest in its executive body, in particular between certain functions in the management board and those exercised by a public servant. While noting the authorities' view that there is no incompatibility or prohibition as the legislation stands preventing a traditional chief from exercising responsibility, electoral or otherwise, in an employers' or workers' organization, the Committee is of the opinion that, if an organization considers that a public office or duty is incompatible with a position in its own leadership, elected or otherwise, it has full scope to incorporate this matter in its constitution, in accordance with the right of professional organizations to draw up their constitutions and rules in full freedom without interference from the authorities, particularly as regards election procedures.*
- 529.** *The Committee notes with concern the indication that Mr Naku was notified on 14 April 2014 of the order for the closure (sealing) of the CNP offices and that since that date he and the other CNP members are denied access to CNP headquarters, bringing the activities of the organization to a complete standstill. Despite the fact that the sealing of the CNP premises was by court order, the Committee is bound to regret the fact that the organization in question has now been unable for a year to organize its activities or adequately protect its members' interests. The Committee urges the Government to announce the reopening (unsealing) of the CNP premises and in the meantime to take all necessary steps to enable the CNP to conduct without hindrance its activities for the defence and promotion of its members' interests pending the holding of new elections to its management board.*
- 530.** *Lastly, the Committee notes the complainants' objection to the fact that the appointed interim administrator was subsequently accredited by the Government as an Employers' delegate to the May–June 2014 session of the ILC instead of Mr Naku, who took part at his own expense in the ILC as an observer accredited by the IOE without the right to vote and lodged a protest with the ILC Credentials Committee on this matter. Recalling that matters relating to participation in the ILC come within the competence of the Credentials Committee, the Committee notes, however, that in its analysis of Mr Naku's complaint, the Committee indicated that the powers conferred on an interim administrator by a court decision should not be such as to prevent the representative chosen by the employers from exercising his functions at the Conference. The Committee also recalled that the only purpose of intervention by professional organizations in the appointment of delegates and technical advisers is to ensure that governments will appoint persons whose opinions will be in harmony with the respective opinions of the employers and workers. In conclusion, the Committee observes that the Government should have held consultations to ensure fully the representation of the employers at the Conference. The Committee expects the Government to ensure that the appointment of the Employers' delegate to future sessions of the ILC will be undertaken in full conformity with the ILO Constitution.*

The Committee's recommendations

- 531.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainants' allegations, despite being requested several times, including through an urgent appeal, to present its comments and observations on this case. In view of the seriousness of the allegations concerning the capacity of employers' organizations to function and conduct their activities on behalf*

of their members, the Committee deeply regrets that the Government has not taken any action since indicating its intention in January 2015 to reply quickly to the present complaint. The Committee urges the Government to be more cooperative in the future.

- (b) If the solution proposed by the justice system does not suit the parties to the dispute, the Committee invites them 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 CNP members to freely and quickly choose their representatives.*
- (c) The Committee urges the Government to announce the reopening (unsealing) of the CNP premises and in the meantime to take all necessary steps to enable the CNP to conduct without hindrance its activities for the defence and promotion of its members' interests pending the holding of new elections to its management board. The Committee, recalling that employers' or workers' organizations should have the right to draw their constitutions and rules in full freedom without interference from the authorities, particularly as regards elections procedures, reminds the Government to respect this principle when reviewing the current case and in the future.*
- (d) The Committee expects the Government to ensure that the appointment of the Employers' delegate to future sessions of the ILC will be undertaken in full conformity with the ILO Constitution.*

CASE NO. 3098

INTERIM REPORT

Complaint against the Government of Turkey presented by

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

Allegations: the complainant organizations allege illegal arrests, detentions and prosecution of several trade union leaders for engaging in trade union activities and abusive use of criminal law to suppress independent trade union movement

532. The complaint is contained in a communication from the Turkish Motor Workers' Union (TÜMTIS), the International Transport Workers' Federation (ITF) and the International Trade Union Confederation (ITUC) dated 7 August 2014.

533. The Government sent its observations in a communication dated 12 February 2015.

- 534.** Turkey has ratified 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

- 535.** In their communication dated 7 August 2014, the complainant organizations – TÜMTIS, ITF and ITUC – allege illegal arrests, detentions and prosecution of several trade union leaders for engaging in trade union activities and abusive use of criminal law to suppress independent trade unionism.
- 536.** By way of background, the complainants explain that TÜMTIS was founded in 1949 and currently has branches in Istanbul, Bursa, Ankara, Izmir, Adana, Gaziantep, Samsun and Mersin. It is affiliated nationally to TÜRK-İS and internationally to the ITF. TÜMTIS affiliates transport and logistics workers in major companies. In 2005, TÜMTIS launched an organizing campaign at Horoz Cargo, a large transportation company (hereinafter, “the company”). As a result of the successful organizing campaign, a considerable number of new members have joined TÜMTIS. In Ankara, the company responded to this development by dismissing six workers, allegedly on grounds of redundancy. Supported by TÜMTIS, the dismissed workers challenged their dismissals in the Ankara Labour Court. The Court ruled that the workers were unfairly dismissed and ordered their reinstatement. On 24 April 2007, following the reinstatement orders, the company filed a complaint with the chief prosecutor of Turkey against several officials and members of the TÜMTIS Ankara branch. On 20 November 2007, the following 17 TÜMTIS Ankara branch officials and members were arrested following raids on their homes:

Name	Role
Nurettin Kilicdogan	Branch President and Education Officer
Erkan Aydogan	Member of Branch Executive Board
Selaattin Demir	Member of Branch Executive Board
Halil Keten	Branch Treasurer
Binali Guney	Member of Branch Executive Board
Huseyin Babayigit	Branch General Secretary
Attila Yilmaz	Member of Branch Executive Board
Candan Genc	Member
Suleyman Demirtas	Member
Serdal Cenikli	Member
Cihan Ture	Member
Ihsan Sezer	Member
Metin Eroglu	Member
Satilmaz Ozturk	Member
Ahmet Cenikli	Member
Cetin Alabas	Member
Arif Sunbul	Member

- 537.** Nurettin Kilicdogan, Erkan Aydogan, Selaattin Demir, Halil Keten, Binali Guney, Huseyin Babayigit and Attila Yilmaz were taken into custody while others were released without charge. They were subjected to 15 successive hours of questioning. On 23 November 2007, the chief prosecutor obtained an order for the pre-trial detention of the seven abovementioned individuals. While the accused were informed of the charges against

them, their lawyers were not permitted to review the 3,000 page file prepared by the prosecution in support of the union officials' pre-trial detention. The defence lawyers were not given a copy of the prosecution report until four months after the initial arrests. They were left in a position where they had to file appeals against the detention order without knowing the exact charges or evidence against their clients. Assisted by TÜMTIS, the detained union leaders challenged pre-trial detention on three occasions: on 29 November 2007, 28 January 2008 and 21 February 2008, to no avail.

538. On 27 March 2008, the chief prosecutor presented a bill of indictment against 15 of the 17 trade unionists and charged them with the following crimes: founding an organization for the purpose of committing crime; harming property; violating the right to peaceful work through coercion in order to obtain unfair pecuniary gain; and obstructing enjoyment of union rights.

539. The first hearing took place on 6 June 2008. On that day, an international delegation led by the ITF visited Ankara to demand the release of the detained trade unionists. Affiliates of TÜRK-İS expressed their solidarity with TÜMTIS. More than 300 union members, supporters and the international delegation rallied before the hearing. A week prior to this date, an online protest campaign had been launched and gathered several thousand signatures to demand the immediate release of the trade union leaders. The Prime Minister's Office was alarmed by these protests and requested the chief prosecutor in Ankara to meet the union prior to the first court hearing to obtain its view. The complainants believe that the international solidarity may have had an impact on the Court's decision to release the union leaders at the first hearing, after six months of pre-trial detention.

540. On 2 June 2008, seven union leaders lodged a case against the Government of Turkey at the European Court of Human Rights (ECtHR) for the alleged breaches of Article 5 (Right to liberty and security) of the European Convention on Human Rights. On 8 February 2011, the ECtHR ruled in favour of the applicants and concluded that the Republic of Turkey had breached Article 5(4) and (5) of that Convention, which reads as follows:

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

541. On 20 November 2012, five years after the initial arrests of TÜMTIS Ankara Branch officials and members, the 11th High Criminal Court in Ankara handed down its judgment and sentenced Nurettin Kilicdogan, Erkan Aydogan, Selaattin Demir, Halil Keten, Binali Guney, Huseyin Babayigit, Attila Yilmaz, Suleyman Demirtas, Serdal Cenkli, Ahmet Cenkli, Cihan Ture, Ihsan Sezer, Metin Eroglu, Candan Genc and Satilmas Ozturk to prison terms varying from six months to two years for founding an organization for the purpose of committing crime, violating the right to peaceful work through coercion in order to obtain unfair pecuniary gain and obstructing enjoyment of union rights. TÜMTIS appealed this decision on behalf of the defendants, but, according to the complainants, it is unclear when the hearing will be scheduled. TÜMTIS considers that the following errors in the investigation process led to the prosecution and oversights in legal procedure by the criminal court judges:

- The suspects' telephones were wiretapped without a warrant and thus, the information so gathered should not have been submitted as evidence. Moreover, nothing in the

telephone conversation transcripts indicate that the defendants were engaging in any unlawful activities.

- As a result of not having any concrete evidence against the union officials, the prosecutor (through the police) sought evidence from other logistics companies where TÜMTIS had a presence. Prior to being approached by the prosecutor, none of the interviewed companies had ever made any complaints against TÜMTIS. The case against the officials was only built after the initial petition from Horoz Cargo failed to produce any incriminating evidence.
- The Ankara Criminal Court relied heavily on the suspects' previous convictions (some of which relate to legitimate trade union activities) and/or investigations, contrary to the Turkish criminal rules of procedure. Evidence was not heard from a single worker of any of the cargo companies and/or TÜMTIS members about being coerced to join the union or having their union rights violated.
- According to the judgment, the evidence against the defendants for allegedly founding an organisation for the purpose of committing a crime is based on the fact that TÜMTIS led organising and industrial campaigns that "increased the number of union members and thus the income of the union".

542. According to the complainants, following the prosecution against the Ankara TÜMTIS leaders, a case was opened by the Turkish national prosecutor against the TÜMTIS national office in Istanbul on charges of it being a criminal organization. A total of nine cases have been opened against TÜMTIS by the national prosecutor with a view to dissolving it.

543. In 2013, a case was opened by the national prosecutor against TÜMTIS National President Kenan Ozturk and Ankara Branch President Nurettin Kilicdogan for criticizing the new labour law and allegedly holding an illegal demonstration. TÜMTIS has also received first-hand evidence from a large multinational company where it has been organizing workers that the police voluntarily offered a file containing alleged TÜMTIS malpractices to the company. The complainants consider that these actions against TÜMTIS are symptomatic of the wider assault on free trade unions in Turkey and refer to a case where 72 members of the Confederation of Public Workers' Unions (KESK) were allegedly charged and convicted under anti-terrorism laws. They also allege that following a brutal crackdown on Istanbul May Day marchers in 2013, many members of the Confederation of Progressive Trade Unions of Turkey (DİSK) have been convicted and sentenced to prison terms.

544. The complainants conclude that the prosecution and conviction of TÜMTIS officials for no other reason than the exercise of legitimate trade union activity is a gross violation of freedom of association rights and basic civil liberties as enshrined in Convention No. 87 and the Resolution of 1970 concerning trade union rights and their relation to civil liberties of the International Labour Conference.

B. The Government's reply

545. In its communication dated 12 February 2015, the Government indicates that the Horoz Logistics and Cargo Services Company had terminated the employment contracts of some of its workers due to reduction of the workload. While some of these workers challenged the dismissal in labour courts, it was also alleged by the company that TÜMTIS representatives intimidated, verbally and physically attacked those present at the workplace and damaged private property. The company requested the Ministry of Labour and Social Security to take an administrative action against TÜMTIS. The Ministry requested the Labour Inspection Board to investigate these allegations. Having assessed the situation, the Board concluded that the allegations related to public safety and security and thus could

not be dealt with by the Labour Inspection Board but should be transmitted to the judicial authorities.

- 546.** The company lodged a complaint to the public prosecutor of Ankara against TÜMTIS Ankara branch office representatives and members on the grounds that the union had transformed itself into a criminal syndicate for the purpose of generating economic profit. In this connection, 17 suspects were arrested, seven of whom were placed in a pre-trial detention. At the first sitting of the court in June 2008, they were released.
- 547.** At the same time, the public prosecutor of Istanbul filed a suit in the Fifth Labour Court of Istanbul to dissolve TÜMTIS pursuant to section 58 entitled “Dissolution” of now obsolete Trade Union Act No. 2821 on the grounds of “establishing a criminal syndicate for the purpose of generating economic profit through trade union”.
- 548.** The Government indicates that Article 51 of the Turkish Constitution regulates the right of employees and employers to form unions and higher organizations without prior authorization. Pursuant to this article, employees and employers have “the right to become a member of a union and to freely withdraw from membership in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations. No one shall be forced to become a member of a union or to withdraw from membership”.
- 549.** The Government further indicates that with the adoption of Trade Unions and Collective Labour Agreements Act No. 6356 on 18 October 2012, trade unions have acquired more freedoms and now enjoy more rights and better protection. All prison sentences under obsolete Acts No. 2821 (Trade Unions Act) and 2822 (Collective Labour Agreement, Strike and Lock-Out Act) were abolished under the new Act No. 6356 and replaced by administrative fines. The Government refers, in particular, to the following provisions of the new Act:
- Section 17, which stipulates that “Any person who completes 15 years of age and who is considered as a worker in accordance with the provisions of this Act may join a workers’ trade union ... Acquisition of membership in a trade union shall be optional. No one shall be forced to be a member or not to be a member of a trade union ...”.
 - Section 19, which stipulates that “No worker or employer shall be forced to maintain as a member or resign his membership in a trade union. Any member may resign from membership in a trade union by an application via e-State”.
 - Section 23, according to which, “Where a union official leaves his workplace on account of being assigned as a union official in the workers’ organization, his contract of employment shall remain suspended. If the union official wishes, he may terminate the contract of employment on the date he leaves his workplace without complying with tire notification period or without waiting for the expiry of the contract and shall be entitled to receive severance payment”.
 - Section 24, which provides for the protections of shop stewards: “An employer shall not terminate the employment contract of shop stewards unless there is a just cause for termination and he/she indicates this clearly and precisely. ... If the court decides that the trade union representative is to be reinstated in his/her employment, the termination shall be annulled and the employer shall pay his/her full wages and all other benefits between the termination and final decision date ...”.
 - Section 25, according to which “The recruitment of workers shall not be made subject to any condition as to their joining or refraining from joining a given trade union, their remaining a member of or withdrawing from a given trade union or their membership or non-membership of a trade union ... In a case brought to the court with the claim that contract of employment has been terminated because of trade union affiliation, the burden of proof to prove the reason for termination shall lie with the employer”.

Furthermore, the Government indicates that in case the worker is not allowed to start work, the right to claim for union compensation is recognized.

- Section 78, entitled “Penal provisions”, which provides that “Any person enrolling members in violation of section 17; and any person forcing another person to maintain as a member or resign his membership in violation of Article 19 shall be liable to an administrative fine of seven hundred Turkish Liras if their acts do not constitute a crime which requires a heavier sentence”.

550. The Government points out that if a trade union official commits a crime, his or her individual responsibility is then engaged and the trade union in question is protected against dissolution. It concludes by emphasizing that this case concerns prison sentences imposed by the court on 14 TÜMTIS Ankara branch office representatives and members for their criminal and not for legal trade union activities.

C. The Committee’s conclusions

551. *The Committee notes that the complainants in this case – TÜMTIS, ITF and ITUC – allege illegal arrests, detentions and prosecution of several trade union leaders for engaging in trade union activities and abusive use of criminal law to suppress independent trade unionism. The complainant organizations mainly refer to the following three distinct but interrelated events allegedly occurred after TÜMTIS had conducted an organizing campaign, as a result of which a considerable number of new members had joined it: (1) a six-month (23 November 2007 – 6 June 2008) pre-trial detention of seven trade union leaders (Nurettin Kilicdogan, Erkan Aydogan, Selaattin Demir, Halil Keten, Binali Guney, Huseyin Babayigit and Attila Yilmaz); (2) the sentencing, by a decision of 20 November 2012 of the 11th High Criminal Court, of 15 trade unionists (seven abovementioned leaders and eight trade union members: Suleyman Demirtas, Serdal Cenikli, Ahmet Cenikli, Cihan Ture, Ihsan Sezer, Metin Eroglu, Candan Genc and Satilmas Ozturk) to prison terms varying from six months to two years for founding an organisation for the purpose of committing crime, violating the right to peaceful work through coercion in order to obtain unfair pecuniary gain and obstructing enjoyment of union rights; and (3) subsequent actions by the national prosecutor with a view to dissolve TÜMTIS.*

552. *With regard to the allegations relating to preventive detention of seven trade union leaders, while recalling that preventing detention should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 78], the Committee notes the 2011 judgment of the ECtHR concerning this matter in the case of Erkan Aydogan v. Turkey wherein the Court observed that, “given the nature of the offence the applicants were charged with, the length of time they spent in detention was not unreasonable in relation to the pre-trial detention of seven trade union leaders”. The Committee further notes however, that the Court held, “that there has been a violation of Article 5 §§ 4 and 5 of the (European) Convention (on Human Rights)” and that in this respect, the State was ordered to pay the applicants a compensation. The Committee therefore considers that this aspect of the case does not call for further examination.*

553. *The Committee further notes the 2012 decision of the High Criminal Court, a copy of which was submitted by the complainant organizations, by which 14 trade unionists were found guilty of “setting up a criminal organization aiming to make gain and membership to this organization” (with the exception of Ahmet Cenikli, who was acquitted), “violating job and employment freedoms”, and “possessing an unregistered handgun” (Metin Eroglu) and have been sentenced to prison terms varying from six months to two years, taking into consideration “the way the crime [was] committed, defendants’ intent and goal, gravity of the occurring damage and danger”. The Court also decided that “there*

[was] no need for punishment of the defendants for [the] crime [of “preventing union rights”].”

- 554.** *The Committee notes from the judgment that similar allegations had been lodged against trade union leaders in the past and that these defendants were already under investigation when the events reported in this case occurred. In the framework of these investigations, mobile communications of several defendants were wiretapped. According to the investigation records appearing in the judgment:*

...

It has been taken under record ... that, in the event scene a group of about 12–13 people formed by TÜMTIS personnel carrying iron bars and wooden sticks in their hands have gathered in front of the business location owned by complainant ...

As expected, after the suspects were taken under custody with the police line-up and identification done on 20.11.2007 it has been determined that on 20.08.2007 the suspects ... had various bars/sticks in their hands and were among the crowd gathering in front of the complainant workplace ...

As a result of the detainment and search orders for the suspects issued in consideration of the advances in the investigation all suspects have been detained starting from 20.11.2007 morning and police searches have been conducted in suspects’ addresses and TÜMTIS Ankara Branch Presidency building.

...

- 555.** *It further appears from the judgment that as a result of the search, illegal weapons have been confiscated from some of the defendants. Having examined the evidence, the Court considered that “it is certain that the defendants have used force or/and threat methods ... to make the complainants hire union member workers, become members of union, otherwise not allow them [to] do business, not unload the goods arriving in trucks to the complainants’ workplaces ..., their workers will be beaten [and] won’t be allowed to earn a living and by going in front of complainants’ workplaces as crowded groups and inciting events, by using force ...” and this way have committed the crime of “setting up a criminal organization aiming to make gain and membership to this organization” and “violating job and employment freedoms”.*

- 556.** *In the light of the contradictory information presented in this case and insufficient information available to it, the Committee is not in a position to determine whether the complainants’ freedom of association rights were violated but must nevertheless express its concern over the fact that the main thrust of the prison sentences appears to concern the violation of job and employment freedoms without a direct link to acts of violence or damaging property. Indeed, according to the judgment, “the people damaging vehicles belonging to the complainant [employer] are not known to the complainant and they have not been identified clearly with the investigation either, in this situation it has been necessary to decide acquittal of defendants ... because clear and persuasive evidence sufficient to decide that they committed the crime of damaging property has not been found”.*

- 557.** *The Committee notes the complainants’ indication that an appeal has been lodged against this decision handed down two and half years ago. Observing that no further information has been provided on the developments regarding the appeal, it requests the Government and the complainants to provide information in this respect and to indicate whether, given the period of their sentences, the trade unionists in question are now free.*

- 558.** *The Committee further notes that according to the complainants, following the prosecution against the Ankara TÜMTIS leaders, a case was opened by the Turkish national prosecutor against the TÜMTIS national office in Istanbul on charges of it being a*

criminal organization. According to the complainants, a total of nine cases have been opened against TÜMTİS by the national prosecutor with a view to dissolving it. They further allege that in 2013, a case was opened by the national prosecutor against TÜMTİS National President Kenan Ozturk and Ankara Branch President Nurettin Kilicdogan for criticizing the country's new labour law and allegedly holding an illegal demonstration. The Committee notes that the Government appears to confirm that the public prosecutor of Istanbul had in fact filed a suit in the 5th Labour Court of Istanbul to dissolve TÜMTİS pursuant to section 58 entitled "Dissolution" of Trade Union Act No. 2821 on the grounds of "establishing a criminal syndicate for the purpose of generating economic profit through trade union", but at the same time points out that this legislation became obsolete following the adoption of Trade Unions and Collective Labour Agreements Act No. 6356 on 18 October 2012. The Government further points out that if a trade union official commits a crime, his or her individual responsibility is engaged and the trade union in question is protected against dissolution. Taking into account this legislative change, the Committee requests the Government to provide information on the current status of the TÜMTİS dissolution cases. It further requests the Government and the complainants to provide detailed information on the alleged prosecution of TÜMTİS National President Kenan Ozturk and Ankara Branch President Nurettin Kilicdogan for allegedly criticizing the new labour law and holding an illegal demonstration.

The Committee's recommendations

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

- (a) The Committee requests the Government and the complainants to provide information on the appeal regarding the 20 November 2012 decision of the High Criminal Court and to indicate whether, given the period of their sentences, the trade unionists in question are now free.**
- (b) The Committee requests the Government to provide information on the current status of the TÜMTİS dissolution cases.**
- (c) The Committee requests the Government to provide detailed information on the alleged prosecution of TÜMTİS National President Kenan Ozturk and Ankara Branch President Nurettin Kilicdogan for allegedly criticizing the new labour law and holding an illegal demonstration.**

CASE NO. 2254

INTERIM REPORT

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

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

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

- 560.** The Committee last examined this case at its March 2015 session, when it presented an interim report to the Governing Body [see 374th Report, paras 874–930, approved by the Governing Body at its 323rd Session (March 2015)].
- 561.** On that occasion, it requested the Government [see 374th Report, para. 930, recommendation (g)] to complete its response on certain issues and indicated its intention to consider them in detail at its May 2015 meeting.
- 562.** In a communication dated 19 May 2015, the IOE and FEDECAMARAS provided additional information.
- 563.** The Government sent additional observations in a communication dated 21 May 2015.
- 564.** 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

- 565.** In its previous examination of the case at its March 2015 meeting, the Committee made the following recommendations on the matters still pending [see 374th Report, para. 930]:

- (a) While expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of conducting economic warfare, the occupation and looting of shops, the seizure of FEDECAMARAS headquarters, etc., the Committee draws the Government's attention to the importance of taking strong measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela.
- (b) The Committee notes with regret that the criminal proceedings relating to the bomb attack on FEDECAMARAS headquarters on 26 February 2008 and the abduction and mistreatment in 2010 of the leaders of that organization, Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds) have not yet been completed (FEDECAMARAS appealed against the ruling ordering the closure of the case concerning the bomb attack on its headquarters), again expresses the firm hope that they will be concluded without further delay, and requests the Government to keep it informed. The Committee reiterates the importance of ensuring that the perpetrators receive sentences that are in proportion to the seriousness of their crimes, with a view to preventing any recurrence of the latter, and that FEDECAMARAS and the leaders concerned are compensated for the damage caused by these illegal acts. The Committee requests the Government to send its observations on the issues raised by FEDECAMARAS with regard to the bomb attack on its headquarters.
- (c) As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee requests that those current or former leaders of FEDECAMARAS be compensated in a just manner. At the same time, the Committee refers to the decision of the Governing Body in March 2014, in which it "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners", which involved, as mentioned by the mission, "the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises and other related problems arising or that may arise in the future", and regrets that the Government stated in its last communication that establishing a dialogue round table on questions of recovery of estates and holding consultations on legislation are not viable. The Committee urges the Government to implement this request along the lines described in the conclusions and to report thereon. Finally, like the high-level tripartite mission, the Committee emphasizes "the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property".
- (d) As regards the structured bodies for bipartite and tripartite social dialogue which need to be established in the country, and the plan of action in consultation with the social partners, involving the establishment of stages and specific time frames for its implementation with the technical assistance of the ILO, as recommended by the Governing Body, the Committee notes the Government's indication that it has not yet concluded the process of consultation with different sectors and organizations and requests the Government to ensure that FEDECAMARAS is included in all these processes. The Committee recalls that the conclusions of the mission refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee urges the Government to immediately adopt tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission. Noting that the Government has not yet provided the requested plan of action, the Committee urges the Government to implement without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon. The Committee urges the Government to promote social

dialogue and initiatives taken in this area, such as the meeting held between the authorities and FEDECAMARAS in February 2015, and to immediately implement tripartite consultations.

- (e) Finally, the Committee, in line with the conclusions of the high-level tripartite mission, urges the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee requests the Government to inform it of any measures taken in this regard. The Committee further requests the Government, as a first step in the right direction that should not pose any problem, to enable a representative of FEDECAMARAS to be appointed to the Higher Labour Council.
- (f) The Committee notes with concern the new allegations by the IOE and FEDECAMARAS of 27 November 2014 concerning: (i) the detention of Mr Eduardo Garmendia, president of CONINDUSTRIA, for 12 hours; (ii) the shadowing and harassment of Mr Jorge Roig, president of FEDECAMARAS; (iii) an escalation of the verbal attacks on FEDECAMARAS by high-level state officials in the media; and (iv) the adoption by the President of the Republic, in November 2014, of 50 decree laws on important economic and production-related matters without consultation of FEDECAMARAS. The Committee requests the Government to send complete observations on these allegations.
- (g) The Committee notes with concern the new allegations from the IOE and FEDECAMARAS and takes note of the recent Government observations on some of the allegations. The Committee requests the Government to complete its response and intends to review the issues raised therein in a detailed manner at its next meeting in May 2015.
- (h) The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

566. In respect of recommendation (g), the report on the previous examination of the case only contains a very brief summary of the allegations and the responses from the Government as these were only received shortly before the Committee's March 2015 meeting. Accordingly, a detailed account of the said allegations and the responses from the Government is provided below.

B. The complainants' new allegations

567. In a communication of 3 March 2015, the IOE and the Venezuelan business association FEDECAMARAS denounce once again the continuing harassment of the country's free employers by the Government of the Bolivarian Republic of Venezuela and protest to the Committee on Freedom of Association of the ILO about new attacks on the private sector and on private Venezuelan companies, many of which are members of FEDECAMARAS, the country's most representative employers' organization. This tactic comprises new acts of aggression and public vilification by the Venezuelan Government targeted against Venezuelan companies and employers, which in the month of February 2015 alone resulted in the sudden detention of more than 15 employers and managers of companies distributing food and medicines and of private union organizations providing in-patient care, supermarket servicing and meat distribution, along with the de facto seizure, by the Government, of a private food-distribution company, accusing it of conspiring against the Government, without due process or respect for their right to defence, incidents which have been widely publicized by the media.

568. The complainant organizations recall that, one year ago, in March 2014, the ILO officially requested the Venezuelan Government to urgently adopt an action plan to launch a social dialogue in the country based on respect and the absence of intimidation against independent and representative employers' and trade union organizations. This insistent request was prompted by concerns relating to violation of the right to freedom of

association and the freedom to form trade unions of employers and workers in the country and was reflected in detail in the report submitted by the ILO high-level mission on its visit to the Bolivarian Republic of Venezuela in January 2014, which was approved by the Governing Body on 27 March 2014. In that report, the Government of the Bolivarian Republic of Venezuela was also requested to ensure that rapid and effective steps were taken to prosecute acts of violence against representatives of employers' and trade union organizations. That notwithstanding, the new attacks in February 2015 are cause for serious concern, demonstrating that the launch of a social dialogue in the country based on respect and the absence of intimidation against independent and representative employers' and trade union organizations is far from being a reality in the Bolivarian Republic of Venezuela.

- 569.** The IOE and FEDECAMARAS allege that, on 1 February 2015, four of the owners and managers of the FARMATODO pharmacy chain, including the Executive President of the chain, Pedro Luis Angarita and his operations Vice-President, Agustín Antonio Álvarez Costa, were detained in connection with the queues formed by consumers at the doors of their distribution centres for medicines and other personal hygiene items which are in short supply in the Bolivarian Republic of Venezuela. The Government saw this as a deliberate delaying tactic designed to undermine and discredit the Government in the eyes of consumers, and accused them of “conspiracy” and “waging an economic war against the Government”. The President of the country went on radio and television to inform the public that the owners of FARMATODO had been detained and were being held in the cells of the Bolivarian National Intelligence Service (SEBIN) and that charges against them had been lodged with the Office of the Attorney-General. The offences with which the FARMATODO directors were charged carried penalties of ten to 12 years' imprisonment.
- 570.** On 2 February 2015, the company issued a statement to its workers emphasizing its willingness to cooperate with a view to ensuring the prompt availability of essential items and to continue providing services to its clients.
- 571.** On 3 February, the President of FEDECAMARAS, Jorge Roig, condemned the actions taken by the Venezuelan Government against the management of FARMATODO. He declared that measures of that kind taken by the authorities formed part of a campaign of “absolute and exclusive persecution against Venezuelan private enterprise”. The President of FEDECAMARAS deplored the “demonizing” of the business sector, which was being put “on trial without any conclusive evidence and without letting us hear the injured parties' side of the story”. He stressed that the pharmacy chain must be given a fair trial, noting that “we've heard nothing from the injured party” and that “these investigations have degenerated into summary trials”.
- 572.** The complainant organizations also allege that, on 1 February 2015, the President of the National Assembly, Diosdado Cabello, the Vice-President for Food Security and Self-Sufficiency, Carlos Osorio, the Minister for Food, Yván Bello, and officials from the National Fair Pricing Authority (SUNDDE) inspected the storerooms of the Día a Día supermarket in Caracas, which, according to a declaration by Mr Cabello, were seized by the Government because of irregularities detected in the sale of products and the large inventory that they contained. On instructions from the President of the Republic, according to Mr Cabello, seizure of the entire network of Día a Día supermarkets was ordered, from the warehouses, to the distribution areas and sales outlets, all of which were then transferred to the State food distribution service, the Venezuelan Food Production and Distribution Board (PDVAL). On 4 February, the Governor of the State of Aragua announced that four more storerooms of the Día a Día chain had been seized in that state, full of “hoarded” supplies.

- 573.** On 5 February 2015, at the warehouses of the Día a Día minimarket chain, situated in Caracas, eight lorries from the national Government Food Mission, escorted by PDVAL officials, inspectors from SUNDDE and the Bolivarian National Guard, loaded up goods for delivery to 36 branches of the chain and to PDVAL premises.
- 574.** On 6 February 2015, the President of the Republic announced that, as from 7 February, the PDVAL state-owned network would be taking over all the services of Día a Día, accusing the latter of waging war against the Venezuelan people. He also urged the judicial authorities and the Public Prosecutor's Office to initiate proceedings against those responsible for offences against the people in this economic war, from this chain in particular, which had now been taken over by the PDVAL, and to ensure that they paid in full and "to show no mercy to these mafias which are harming our people". He also instructed the Public Prosecutor's Office to determine the material damage caused to society and the State through the conduct of "economic warfare by this group".
- 575.** On 6 February 2015, Día a Día issued a communiqué explaining that it was quite normal for most of the company's stock to be stored in its central warehouse, and that this stock generally only covered a few days of sales. Where staples were concerned, and in particular maize meal, the warehouse generally held no more than three days of stock for sales in all the chain's outlets of 197 tonnes per day. It insisted that there was neither any hoarding nor a boycott.
- 576.** Francisco Martínez, the First Vice-President of FEDECAMARAS, maintained that the unrelenting attacks against the private sector were a source of concern to FEDECAMARAS, which was alarmed that it should be deemed an offence to hold three days of stock.
- 577.** On 8 February 2015, the President of Día a Día explained that the legal arrangements for the company's incorporation into the State food distribution network, PDVAL, still had not been worked out. "We do not know", he said, "if this is expropriation, or interference, or what. All we know is that our director-general is in prison. ... Our supplies have been taken and are being invoiced by PDVAL".
- 578.** The complainant organizations further indicate that, on 1 February 2015, SEBIN detained the directors of the Día a Día supermarket chain and Luis Rodríguez, President of the National Association of Supermarkets and Self-Services (ANSA). They were detained as they left a meeting which had been called by the Government in the Palace of Miraflores, with the Vice-President for Food Security and Self-Sufficiency, Carlos Osorio, to discuss the issue of supplies in the country.
- 579.** The complainant organizations add that, on 1 February 2015, the Government seized the meat distributor Corporación Cárnica 2005 and detained its owners. The head of SUNDDE announced the detention of five managers from the company in the State of Falcón, for having sold meat, chicken and fish at a mark-up of up to 1,000 per cent, and on suspicion of the offence of hoarding. At a meeting with representatives of the United Socialist Party of Venezuela (PSUV), the State President announced that the company had been seized by the Government and that it would now become part of the PDVAL network. During the extended plenary meeting of the PSUV, Diosdado Cabello, President of the National Assembly, requested President Maduro personally to preside over the Corporación Cárnica take-over operation in the State of Falcón. The Head of State announced that the company would be handed over to the PDVAL State network.
- 580.** The IOE and FEDECAMARAS allege that, on 5 February 2015, eight SEBIN officials detained the President of the Venezuelan Association of Clinics and Hospitals, Dr Carlos Rosales Briceño, in his practice in the city of Valencia, in Carabobo State. The SEBIN

officials ordered the doctor to accompany them to the regional headquarters. It is assumed that Dr Rosales's detention was prompted by recent statements that he had made regarding the shortage of medicines and supplies necessary to protect the lives and health of Venezuelans in clinics and hospitals, in which he had urged the Venezuelan authorities to respond to the emergency. Dr Rosales said, after his release, that SEBIN had informed him that his statements to the media "might have caused alarm among the population and were not objective".

- 581.** In their communication dated 19 May 2015, the IOE and FEDECAMARAS reiterate their previous allegations and submit press clipping summaries of statements of an intimidating nature made by the President of the Republic and other authorities against FEDECAMARAS and its leaders, in which they are also accused of criminal offences and carrying out an economic war. These press clippings include statements that were also made in the month of April 2015.

C. The Government's replies

- 582.** In its communication dated 10 March 2015, the Government stated that the Bolivarian Republic of Venezuela was currently suffering from threats and sanctions imposed from abroad with a view to destabilizing the country. Clear evidence of these destabilizing threats had been provided to various community organizations and international agencies such as the Community of Latin American and Caribbean States (CELAC), the Bolivarian Alliance of the Peoples of Our America – Peoples Trade Treaty (ALBA–TCP), the Southern Common Market (MERCOSUR) and the Union of South American Nations (UNASUR), which took a unanimous position against these attempts to interfere in the country and to destabilize its democratic system.
- 583.** As part of this economic war, blatantly conspiratorial political and economic groups had expended huge sums of money buying essential items which were then sent out of the country, hidden away or simply destroyed to prevent them being distributed to the population. In the month of January 2015 alone, there was a difference of 35 per cent in the quantity of such items distributed than in the same month of the previous year. This sabotage of the country's economy had led to the emergence of a black market in commodities and to turmoil in the population, comparable to that which developed in Chile in the months preceding the coup d'état against President Allende that led to the Pinochet dictatorship.
- 584.** The political aims of this economic sabotage were clear and were demonstrated by countless political statements calling for sedition, for acts of looting and violence or, quite blatantly, for the overthrow of the legitimate Government of President Nicolás Maduro.
- 585.** The incitements to acts of violence had fallen on deaf ears, because the population had stoically endured the queues necessary for controlled items, caused by their withdrawal from distribution and disappearance.
- 586.** Despite the attacks, the people had firmly maintained their attachment to democracy, independence and to the gains that had been made to uphold the Bolivarian revolution and the legacy of the Supreme Commander, Hugo Chávez Frías.
- 587.** Thanks to organized action by trade unions and local councils, which had set up inspection, investigation and information-gathering teams to combat hoarding and speculation, the country was successfully resisting the economic war and was able to detect semi-clandestine stashes of commodities and instances of the buying up of commodities so that they could be taken out of circulation and reappear outside the normal distribution channels at inflated prices.

- 588.** The Government stated that that action has led to the arrest of many unscrupulous traders, who – regrettably – were “employers” engaged in speculation, hoarding and the smuggling of goods for profiteering purposes, all designated as offences under the law, as they were in many other countries. Some of those “employers” were managers or owners of large distribution companies belonging to important economic groups. Despite their membership of those important economic groups, they had been treated exactly the same as small-scale employers, and they had been accorded their constitutional right to defence and due process.
- 589.** In October 2014, 60 kilometres from Caracas, several storehouses had been found containing medical, surgical and pharmaceutical equipment sufficient to supply the needs of the hospital network for six months. To give an idea of the hoard, it had included 14 million syringes and 9 million pairs of gloves, at the very time when the media, both national and international, were highlighting “the absence of medical and surgical equipment” in the Bolivarian Republic of Venezuela, specifying in particular syringes and gloves. The medical supply companies Javoy and Suplidora Hospimed 2004 had received \$236 million from the Venezuelan Government for the import of supplies that had then been withheld from the public. The owners of those companies were now fugitives from justice.
- 590.** In January 2015, the company Distribuidora Herrera CA had been seized, with more than 1,000 tonnes of essential foodstuffs. In both cases, many of the items had been distributed to businesses and then, anomalously, had gone back into storage and were being repackaged to be illegally spirited out of the country. The main shareholder of that company was the firm Diamond Trading Investments Ltd., based in Barbados, whose owner was Ms Peggy Ordaz, now a fugitive from justice, an activist in the Voluntad Popular party, which had been linked to the coup attempts in 2002 and whose main leader was currently in detention, charged with provoking the violent activities known as “guarimbas” during 2014.
- 591.** While both cases had been reviewed extensively in the national press, they had been omitted from the press clippings accompanying the communication from FEDECAMARAS, despite their direct link with the facts being reported. Investigations and intelligence operations had led to the arrest of the owners of the pharmaceutical and food distribution chains, FARMATODO and Día a Día. That was not action taken against some trade union activity by the accused – there had not in fact been any such activity – but a normal and legal response to offences connected with organized crime.
- 592.** Representatives of the company Corporación Cárnica 2005 had been arrested because they were found to be selling meat and poultry outside regular distribution channels and at prices inflated to ten times the value of the product, the price of which is regulated because it is categorized as a basic necessity. In that case too, the owners of the meat distributor had not been engaged in any trade union activity but were carrying out reprehensible actions of hoarding and speculation, to the detriment of the Venezuelan people.
- 593.** All those cases related to specific events involving citizens suspected of the commission of an offence and it was now up to the judicial system to determine whether or not they were guilty. Their status as “employers” was entirely circumstantial. Almost all Venezuelan employers dissociated themselves from that situation and instead condemned the offences of hoarding and speculation which had been impeding the normal development of the country’s economy.
- 594.** Accordingly, the legal and judicial actions based on the country’s law which had been taken against some of the owners or representatives of those companies or chains had nothing to do with and were not in any way linked to their status as employers, but were

prompted by their suspected involvement in offences established in Venezuelan law and for which they must be brought to justice, whether they were employers or not.

595. The country's worker President, Nicolás Maduro, had extended an invitation to all national and international businesses that believed in work – and they made up the vast majority. To date, in 2015, as part of efforts to resist the economic war, 327 meetings had been held with chambers, associations and various unions of employers, in a productive social dialogue that had served to isolate certain criminal groups which had been masquerading as businesses or employers.
596. The communication from FEDECAMARAS was very specific, noting situations that had arisen, including between 1 and 5 February 2015. It was noteworthy that, in his communication, the President of FEDECAMARAS had omitted to mention that, on 10 February – namely, after the events in question – President Maduro had called all business sectors to a “national dialogue, to consider proposals on the economy” and for that purpose had appointed the employers' leader, Miguel Perez Abad, President of FEDEINDUSTRIA, one of the main employers' organizations in the country, as presidential commissioner for economic matters.
597. On Thursday, 12 February, Mr Abad had met representatives of FEDECAMARAS. The importance of that meeting had been affirmed by Jorge Roig, President of FEDECAMARAS and one of the signatories of the communication in reference, who had said: “Maduro has made a positive decision to call all sectors to a dialogue on the economy We all undoubtedly share the aim of ensuring the adequate and continued supply of food to the country and meeting their daily material needs We also concur in our resolute and categorical rejection of all hoarding, speculation and smuggling, offences against commercial and business ethics which should be punished with the full force of the law.”
598. The Government attached in full the statements by Mr Roig, President of FEDECAMARAS, and the statement issued by FEDECAMARAS the following week. They made no mention of situations like those described in the complaint currently before the Committee on Freedom of Association, even though they had occurred only the previous week.
599. The Government stated that it did not understand how, just two weeks after those public statements by the civil association FEDECAMARAS, a communication could have been issued containing phrases like “assault on the business community”, “attacks on private companies”, “acts of aggression and discrediting the public”, which were quite inconsistent with the real situation in the Bolivarian Republic of Venezuela and with the statements issued by the leaders of that same civil association. It was precisely that kind of ambiguous behaviour by FEDECAMARAS and its duplicitous political game which was undermining the confidence of the Venezuelan people in the sincerity of that civil association and of other such civil associations, and which regrettably had led it to withdraw from the social dialogue under way in the country, despite the numerous appeals by the President himself.
600. What made that situation particularly serious, in the Government's view, was that citizens engaged in business activity were the ones perpetrating the offences. It was not a matter of attacks against entrepreneurship, but the actions of a small group of citizens who were suspected of having committed offences and it was now up to the Venezuelan judicial authorities to establish responsibility. Nor was it a matter of union harassment, since the vast majority of those concerned were not attached to any union, but routine arrests of persons engaged in the commission of offences which were condemned by FEDECAMARAS itself. It was now up to the courts to determine whether or not they were

guilty, while guaranteeing that all detainees received due process and the right to defence, as were guaranteed to every citizen of the country.

- 601.** The Government claimed that there was some motive behind the complaint to the ILO to follow up on judgments handed down in the country for offences committed by citizens against the Venezuelan people, and that these had nothing to do with persecution, harassment or aggression against businesses or employers.
- 602.** Where the request by the IOE was concerned, the country would have due respect for human rights, in accordance with the political obligation of those now running the Government, who stood in a long tradition in the country of active defenders of human rights and had themselves been the victims of violations of their own rights in the past. Furthermore, no ILO Convention stated that the punishment or liabilities incurred by such activities and offences as smuggling, speculation and hoarding could be described as persecution or the harassment of unions; quite the reverse, it was to defend the human rights of the people that the Government had acted against those offences.
- 603.** Lastly, the Government categorically rejected the claim to this international body that those acts were offences against the Venezuelan people, measures that “may create a climate of intimidation impeding the normal conduct of activities by employers’ organizations and their members and their exercise of their freedom of association and the rights enshrined in Convention No. 87”. It reaffirmed the full compliance by the Bolivarian Republic of Venezuela with freedom of association and the right to organize and, specifically, with Convention No. 87; and it pointed out once again that the commission of offences punishable under the law by any citizens, regardless of their status or situation, if detected and proved by the judicial authorities, would incur the corresponding penalties.
- 604.** In its communication of 12 March 2015, the Government indicated that it had requested the Attorney-General’s Office to provide all details of the latest allegations by the complainants, so that it could urgently and promptly respond to those allegations, regarding the supposed detention without due process and without the right to defence, during the month of February 2015, of 15 employers and managers of companies distributing food and medicines or providing in-patient hospital care.
- 605.** The Attorney-General’s Office gives updates of the proceedings against suspects in the following cases:
- *FARMATODO pharmaceutical chain:* Proceedings have been initiated against the citizens Pedro Luis Angarita and Agustin Alvarez, who were apprehended in the act, for the offences of boycotting and destabilizing the economy, and their preventive judicial detention has been authorized by Control Court No. 41 of the criminal judicial circuit of the Caracas metropolitan area (Supervisory Court). The case is currently at the investigation stage.
 - *Día a Día supermarket and minimarket chains:* Proceedings have been instituted against the citizens Manuel Andrés Morales Ordosgoitti and Tadeo Arriechi, the first of whom was apprehended in the act and the second taken into custody under an arrest warrant for the offences of boycotting and destabilizing the economy, and their preventive judicial detention has been authorized by Control Court No. 36 of the Caracas metropolitan area (Supervisory Court). In addition, the governing body of SUNDDE has ordered the administrative measure of temporary seizure of the Día a Día facilities, under an administrative order dated 7 February 2015, and the case is currently at the investigation stage.

- 606.** With regard to the ANSA, it confirms that there is no criminal investigation against the citizen Luis Rodríguez, who holds the position of president of the said association.
- *Corporación Cárnica*: Proceedings have been initiated against the citizens Tania Carolina Salinas (apprehended in the act and placed in judicial preventive detention), Delia Isabel Ribas (apprehended in the act and taken into precautionary pre-trial custody), Angelly Lopez Graterol (apprehended in the act and taken into precautionary pre-trial custody), Ernesto Luis Arenas Pulgar (apprehended in the act and taken into precautionary pre-trial custody) and Yolman Valderrama (apprehended in the act and taken into precautionary pre-trial custody), on charges of boycotting, hoarding, fraudulently misrepresenting the quality of goods, price rigging, selling expired foodstuffs, criminal conspiracy and speculation. The case is currently at the investigation stage with Circuit Court No. 2 with jurisdiction for economic and cross-border offences in the judicial district of Falcón State (Supervisory Court) and Circuit Court No. 1 with jurisdiction for Falcón State (Supervisory Court). In addition, the governing body of SUNDDE has ordered the administrative measure of temporary seizure, under an administrative order dated 28 January 2015).
- 607.** Where the *Venezuelan Association of Clinics and Hospitals* is concerned, the Attorney-General's Office indicates that there is no criminal investigation against the citizen Rafael Guerra Méndez, President of the Venezuelan Association of Clinics and Hospitals. On 6 February 2015, however, he was questioned at the headquarters of the SEBIN in connection with statements that he had made to the media.
- 608.** The Attorney-General's Office concludes by emphasizing that, in accordance with the principles of law and justice enshrined in the Venezuelan Constitution, the right to defence is conceived as a guarantee of due process, which is applicable to all judicial and administrative proceedings; accordingly, when citizens are being prosecuted for the alleged commission of acts defined as punishable under law, not only are their rights recognized, the exercise of those rights is also guaranteed.
- 609.** In its communication dated 21 May 2015, the Government states that it confirms its reply sent on 25 February 2015 concerning this case since what had been asked was sufficiently answered on that occasion. Moreover, the Government confirms each of its previous replies pertaining to the recommendations contained in the report of the ILO tripartite mission which visited the country in January 2014, as well as any other reply which is relevant to this case.
- 610.** With regard to the trial held in relation to the bombing of the FEDECAMARAS headquarters on 26 February 2008, the Government states that the Office of the Attorney-General of the Republic has notified that, as regards the criminal case on the attack of the FEDECAMARAS headquarters, the 28th Court of First Instance of the Criminal Judicial Circuit of the metropolitan area of Caracas issued an acquittal verdict of the accused, Ms Ivonne Gioconda Márquez Burgos, on public intimidation charges and misuse of identification. However, following an appeal filed by the Public Prosecutor, a hearing was held on 29 April 2015 and the Court of Appeals of the Criminal Judicial Circuit used the delay granted by law to render a decision. The court decision is still pending.
- 611.** With regard to the trial concerning acts committed against Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz, the Government states that the accused, despite having been duly notified, failed to appear in Court. The Government adds that the Office of the Attorney-General of the Republic has indicated that once the continuation of the oral and public proceedings before the Eleventh Court of First Instance of the Criminal Judicial Circuit of the Caracas metropolitan area was scheduled to

commence, it had to be interrupted on 21 January 2015 due to the decision of the accused to dismiss his lawyer. The Court will therefore set a new date for the commencement of the oral and public proceedings, once the accused appoints his new legal representative.

D. The Committee's conclusions

- 612.** *With regard to the Committee's recommendation (g), in its previous examination of the case, the Committee recalls that, in its March 2015 conclusions:*

... The Committee notes with concern the allegation contained in the recent joint communication from the IOE and FEDECAMARAS, that 15 entrepreneurs from various sectors, including the President of the Venezuelan Association of Clinics and Hospitals and the President of the National Association of Supermarkets and Self-Services, Luis Rodríguez, were detained in February 2015 without due process and in violation of the right of defence, as well as other allegations (seizure of company premises, threat of expropriation). The Committee notes the Government's communications of 10 and 12 March 2015 denying attacks on business and stating that there are no criminal proceedings against the two employer leaders mentioned by the complainants, (Luis Rodríguez and Rafael Guerra Méndez), reporting the prosecution of eight enterprise managers for offences of an economic nature, and reporting also that, as regards the eight enterprise managers, the judicial authority has taken measures for their preventive detention or alternative precautionary measures [see 374th Report, para. 929].

- 613.** *The Committee deeply regrets that the Government has not sent the supplementary information that the Committee had requested in relation to the allegations of the IOE and FEDECAMARAS mentioned in recommendation (g) and that it has not even sent information on developments in the criminal proceedings initiated against most of the leaders or employers whose arrest has been alleged, despite the Committee having deemed the case to be extremely serious and having therefore drawn the Governing Body's special attention to it. The Committee expresses its concern, noting that it is alleged that some detainees might be condemned to 10–12 years of imprisonment.*
- 614.** *Since the Government's most recent reply limits itself to confirming its previous statements concerning the allegations of detention of business persons and employers' leaders, the occupation of business premises and the seizure of goods, the Committee emphasizes the importance of having the supplementary information requested, given the contradiction between the allegations and the Government's response as to whether or not it has complied with the rules of due process, whether or not economic offences have been committed, whether or not there has been an attack on employers and their officials and, whether or not there are ulterior motives which have nothing to do with defending the interests of employers' organizations and their members. The Committee stresses in particular the important need for the Government to indicate the specific allegations against each of the employers or leaders mentioned in the complaint, and not to limit itself to an indication of the general criminal offences (boycott, hoarding, smuggling, speculation, etc.). The Committee urges the Government to provide this information together with information on developments in the respective criminal proceedings. The Committee also requests the Government to forward its observations regarding the latest additional information on these questions that the IOE and FEDECAMARAS have transmitted in their communication dated 19 May 2015. The Committee calls on the authorities to consider lifting the precautionary custodial measures imposed on employers and business leaders pending trial.*
- 615.** *With regard to the recommendation (b), the Committee observes with concern from the Government's statements that the criminal proceedings in question have not yet been completed. The Committee therefore reiterates its previous recommendations.*

616. *With regard to recommendations (a) and (c)–(f), that it issued in relation to other aspects of the case, the Committee expresses its deep concern, observing the lack of information and lack of any progress; reiterates its previous conclusions and recommendations and urges the Government to take the requested measures without delay. More particularly, the Committee expresses its deep concern, observing that in their allegations of 19 May 2015, the IOE and FEDECAMARAS indicated new acts of intimidation and stigmatization against the latter and its leaders by the authorities, including in April 2015.*
617. *In general, the Committee expresses its grave concern at the specific situation regarding the rights of freedom of association of FEDECAMARAS, its leaders and its members.*

The Committee's recommendations

618. *In the view of the above interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *While expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of carrying out an economic war, the occupation and looting of stores, the seizure of FEDECAMARAS headquarters, etc., the Committee wishes to point out to the Government the importance of strong measures to avoid such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, ratified by the Bolivarian Republic of Venezuela.*
 - (b) *The Committee notes with regret that the criminal proceedings relating to the bomb attack on FEDECAMARAS headquarters on 26 February 2008 and the abduction and maltreatment in 2010 of the leaders of that organization, Noel Álvarez, Luis Villegas, Ernesto Villamil and Albis Muñoz (the last-mentioned sustaining three bullet wounds) have not yet been completed, again expresses the firm hope that they will be concluded without further delay, and requests the Government to keep it informed. The Committee reiterates the importance of ensuring that the perpetrators receive sentences that are in proportion to the seriousness of their crimes, with a view to preventing any recurrence of the latter, and that FEDECAMARAS and the leaders concerned are compensated for the damage caused by these illegal acts. The Committee requests the Government to send its observations on the issues raised by FEDECAMARAS with regard to the bomb attack on its headquarters.*
 - (c) *As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee requests that those current or former leaders of FEDECAMARAS be compensated in a just manner. At the same time, the Committee refers to the decision of the Governing Body in March 2014, in which it "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners", which involved, as mentioned by the mission, "the establishment*

of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises and other related problems arising or that may arise in the future”, and regrets that the Government stated in its last communication that establishing a dialogue round table on questions of recovery of estates and holding consultations on legislation are not viable. The Committee urges the Government to implement this request along the lines described in the conclusions and to report thereon. Finally, like the high-level tripartite mission, the Committee emphasizes “the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property”.

- (d) As regards the structured bodies for bipartite and tripartite social dialogue which need to be established in the country, and the plan of action in consultation with the social partners, involving the establishment of stages and specific time frames for its implementation with the technical assistance of the ILO, as recommended by the Governing Body, the Committee notes the Government’s indication that it has not yet concluded the process of consultation with different sectors and organizations and requests the Government to ensure that FEDECAMARAS is included in all these processes. The Committee recalls that the conclusions of the mission refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chair. The Committee urges the Government to immediately adopt tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission. Noting that the Government has not yet provided the requested plan of action, the Committee urges the Government to implement without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon. The Committee urges the Government to promote social dialogue and initiatives taken in this area, such as the meeting held between the authorities and FEDECAMARAS in February 2015, and immediately to implement tripartite consultations.*
- (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 further requests the Government, as a first step in the right direction that should not pose any problem, to enable a representative of FEDECAMARAS to be appointed to the Higher Labour Council.*
- (f) The Committee notes with concern the allegations by the IOE and FEDECAMARAS of 27 November 2014 concerning: (i) the detention of Mr Eduardo Garmendia, President of CONINDUSTRIA, for 12 hours; (ii) the shadowing and harassment of Mr Jorge Roig, President of FEDECAMARAS; (iii) an escalation of the verbal attacks on FEDECAMARAS by high-level State officials in the media; and (iv) the adoption by the President of the Republic, in November 2014, of 50 decree*

laws on important economic and production-related matters without consultation of FEDECAMARAS. The Committee requests the Government to send complete observations on these allegations.

- (g) *The Committee notes with concern new allegations from the IOE and FEDECAMARAS and the observations by the Government of 10 and 12 March 2015 on some of the allegations. The Committee once again requests the Government to complete its response, to indicate the specific allegations against each of the 13 employers or managers from the different sectors who have been detained or placed under precautionary measures by the judicial authorities, and not to limit itself to an indication of the general criminal offences (boycott, hoarding, smuggling, speculation, etc.), and also to provide information on developments in the respective judicial proceedings. The Committee also requests the Government to forward its observations concerning the latest additional information transmitted by the IOE and FEDECAMARAS in their communication dated 19 May 2015. The Committee intends to examine these serious issues in a detailed manner, in full knowledge of the facts, and requests the authorities to consider lifting the precautionary custodial measures imposed on employers and business leaders pending trial.*
- (h) *The Committee expresses its deep concern, observing the lack of information and any progress on the previous recommendations and firmly urges the Government to take all the requested measures without delay, including with regard to the new allegations of acts of intimidation and stigmatization against FEDECAMARAS, its leaders and members by the authorities, contained in its communication of 19 May 2015.*
- (i) *The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.*

CASE NO. 2968

DEFINITIVE REPORT

**Complaint against the Government of the
Bolivarian Republic of Venezuela
presented by
the Association of Teachers of the Central University
of Venezuela (APUCV)**

***Allegation: Detention of and bringing of
charges against trade unionists in the
construction sector***

- 619.** The Committee examined this case at its June 2013 and October–November 2014 meetings and, on the latter occasion, presented an interim report to the Governing Body [see 373rd Report of the Committee on Freedom of Association, paras 531–546, approved by the Governing Body at its 322nd Session (November 2014)].

- 620.** The Government sent additional observations in a communication dated 20 February 2015.
- 621.** 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

- 622.** In its previous examination of the case, at its October–November 2014 meeting, the Committee made the following recommendations on the issues that remained pending [see 373rd Report, para. 546]:
- (a) Underlining that the allegations refer to serious issues related to the freedom of trade unionists, the Committee firmly expects that the Government will send without delay the information that it has received from the Office of the Attorney-General on the situation concerning the five trade unionists in the construction sector mentioned in the allegations who were first detained and then brought before the military judicial authorities and required as an interim measure to report every week to the tribunal.
 - (b) The Committee also invites the complainant organization to supply the names and union positions of the one hundred or so trade unionists who have reportedly faced criminal charges for having carried out union activities and, in the case that this is not possible, to indicate any eventual impediments to providing such information.
- 623.** With regard to recommendation (a), the complainant organization had stated that the alleged acts, involving the detention of, and bringing of charges against, trade unionists in the State of Táchira, occurred as from 13 August 2012, noting that the trade unionists in question were Hictler Torres, Luis Arturo González, José Martín Mora, Wilander Operaza and Ramiro Parada. According to the allegations, they were detained for having protested to demand the payment of their social benefits by the private enterprise Xocobeo CA, under contract with the Ministry of Housing and Environment for the construction of housing units in a military zone, Murachí Fort. According to the allegations, the crimes with which they were charged were: failure to respect a sentry and failure to respect the armed forces, sections 502 and 505 of the Basic Code of Military Justice; and violation of the security zone, established by section 56 of the Basic Act on the Security of the Nation [see 368th Report, para. 1000, and 373rd Report, para. 546].

B. The Government's reply

- 624.** In its communication of 20 February 2015, the Government stated, with regard to recommendation (a) made by the Committee, that the Office of the Attorney-General has reported that there are no reports, nor do its records show, that any worker or executive of the private enterprise Xocobeo CA has been detained or that any of the individuals mentioned has been brought before “military judicial authorities”. The Government added that none of the 187 trade union organizations of construction workers that exist in the country have trade union officials or representatives registered by the names of Hictler Torres, Luis Arturo González, José Martín Mora, Wilander Operaza and Ramiro Parada.
- 625.** In the light of the foregoing and, in particular, given that none of the workers mentioned by the complainant organization are being prosecuted or detained, the Government requests the Committee not to pursue its examination of the allegations.
- 626.** With regard to the complainant's allegations that more than one hundred workers have reportedly faced criminal charges for having exercised their trade union rights, the Government urges the Committee to decide, as it has done on other occasions, not to

pursue the examination of this allegation in the absence of the specific information requested from the complainant.

- 627.** Lastly, the Government reiterates the comments that it presented during the previous examination of the case.

C. The Committee's conclusions

628. *With regard to recommendation (a) made during its previous examination of the case, the Committee takes due note of the statement by the Office of the Attorney-General, communicated by the Government, that the five workers mentioned by the complainant organizations are not being detained or prosecuted and have not been brought before a military tribunal. Under the circumstances, the Committee will not pursue its examination of these allegations.*

629. *With regard to recommendation (b), the Committee notes with regret that the complainant organization has ignored the Committee's request that it supply the names of the one hundred or so trade unionists who have faced criminal charges for having carried out union activities. Consequently, the Committee will not pursue its examination of these allegations.*

The Committee's recommendation

630. *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. 3059

INTERIM REPORT

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

- **the National Union of Workers of Venezuela (UNETE)**
- **the Confederation of Workers of Venezuela (CTV)**
- **the General Confederation of Workers (CGT)**
- **the Confederation of Autonomous Trade Unions (CODESA)**
- **the Independent Trade Union Alliance (ASI)**
- **the Autonomous Front for the Protection of Employment, Wages and Trade Unions (FADESS)**
- **the Autonomous Revolutionary United Class Movement (C-CURA) and**
- **the Grassroots Trade Union Movement (MOSBASE)**

Allegations: Exclusion of the general secretary of the oil industry trade union federation from the negotiating table; dispersion of a trade union demonstration; and dismissal of a trade union official without respect for due process

- 631.** The complaint is contained in two communications dated 10 February 2014, presented jointly by the following trade union organizations: the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Workers (CGT), the Confederation of Autonomous Trade Unions (CODESA), the Independent Trade Union Alliance (ASI), the Autonomous Front for the Protection of Employment, Wages and Trade Unions (FADESS), the Grassroots Trade Union Movement (MOSBASE) and the Autonomous Revolutionary United Class Movement (C-CURA).
- 632.** The Government sent its observations in communications dated 15 May and 17 and 29 October 2014.
- 633.** The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 634.** In their communications of 10 February 2014, UNETE, CTV, CGT, CODESA, ASI, FADESS, MOSBASE and C-CURA allege that on 3 February 2014 a peaceful trade union protest by workers at the Petróleos de Venezuela, SA (PDVSA) refinery in the city of Puerto La Cruz, state of Anzoátegui, was dispersed by the Bolivarian National Guard, who arrested a number of union officials and brought them before the criminal courts.
- 635.** According to the allegations, the reasons for the trade union protest were the delay in the conclusion of the new collective labour agreement and the exclusion of the general secretary of the United Oil Workers' Federation of Venezuela (FUTPV), Mr José Bodas,

from the negotiating table. The following nine workers and officials were detained: Mr Endy Alexander Torres Guarema, Mr Moisés Neptali Parica Pinto, Mr Leonardo Rafael Ugarte Rincón, Mr Emiro José Millán Gómez, Mr Bladimir Carvajal, Mr Omar David Parica Pinto, Mr Jesús Rafael Giraldo Rodríguez, Mr Gustavo José Pereira La Rosa and Mr William Eleazar Parica Pinto. All were taken to Regional Command No. 75 of the Bolivarian National Guard (Regional Command No. 75), they were deprived of the use of their mobile phones and were detained until the following day, when they were released, after the Prosecutor-General's Office, through Criminal Prosecutor No. 1 of the judicial district, charged them, on the basis of sections 192, 193 and 218 of the Penal Code, with the offences of resisting authority and engaging in coercion to stop work.

- 636.** The complainants add that the judicial body handling the case is Criminal Court of Control No. 5, Criminal Judicial Circuit of the state of Anzoátegui, headed by Judge Ydanie Almeida Guevara, who, responding to the request of the Prosecutor-General's Office, ordered the following measures: appearance before the court every 30 days and a ban on protests, in accordance with section 242(9) of the Penal Code.
- 637.** The complainants highlight the problem of the criminalization of labour protests in the Bolivarian Republic of Venezuela and point out that the ILO supervisory bodies have repeatedly called for trials against trade union officials to be suspended and for the laws restricting strikes to be repealed.
- 638.** In another communication dated 10 February 2014, the complainants allege that on 21 November 2013 the dismissal was announced of Mr Iván Freites, president of the Single Union of Oil, Petrochemical, Gas and Allied Industry Workers of the State of Falcón (SUTPGEF), who brought a complaint before the ILO Committee on Freedom of Association in 2012 against the PDVSA enterprise for violations of Conventions Nos 87 and 98 and filed complaints with various national bodies for non-compliance with regulations on working conditions and the working environment. The trade union is basically organized at the Paraguaná Refinery Complex (known as the Amuay Refinery, the biggest in the world). More than a year later, the dismissal took place of Mr Iván Freites, a trade unionist who had denounced the state for failing to honour labour-related commitments, after being excluded from contractual discussions on collective conditions of work by the PDVSA, despite being a member of the executive committee of the FUTPV.
- 639.** The complainants indicate that Mr Iván Freites learned of his dismissal through the publication of a notice by the PDVSA in the local press in the state of Falcón on 21 December 2013, without having been previously notified by the labour administrative authority. In this way due process was violated in principle and he was unable to avail himself of the administrative and judicial remedies to which he is entitled under national law. On the other hand, the PDVSA arrogated to itself powers which do not belong to it, assuming the role of the labour authority as regards notification, which is totally illegal under Venezuelan law. Furthermore, the action of the labour authority, in clearly favouring the PDVSA by informing it of the content of its decision, shows its lack of independence with respect to the powerful Venezuelan state oil company.
- 640.** Moreover, the PDVSA explicitly indicated in the abovementioned notification that it was giving the trade unionist 12 hours to appear at the Paraguaná Refinery Complex for the purpose of implementing the procedures connected with his formal removal from the PDVSA staff payroll. It should be noted that Mr Iván Freites had completed almost 30 years of service in the state oil company and that the notification was issued during the period of customary Christmas celebrations that are part of Venezuelan culture, when the PDVSA staff and the general public usually have time off and working hours are reduced.

For this reason, it would have been difficult to convene the community of workers to inform them of the arbitrary action that had been committed.

- 641.** Lastly, the complainants state that the facts reported in the present complaint constitute a violation of ILO Conventions Nos 87 and 98.

B. The Government's reply

- 642.** In its communication of 15 May 2014, the Government states, with regard to the dismissal of trade union official Mr Iván Freites, that by way of protection of trade union activity in the Bolivarian Republic of Venezuela, no trade union official may be dismissed or transferred without the prior completion of a procedure to verify that there are valid reasons for the dismissal or transfer. The Government indicates that the "Alí Primera" Labour Inspectorate of Punto Fijo, at the request of the PDVSA, launched the procedure for establishing misconduct and authorizing the dismissal of Mr Iván Freites. The labour inspectorate, by Administrative Decision No. 075-01-2013 of 20 December 2013 and in accordance with section 79 of the Basic Act concerning labour and workers – which specifies various valid reasons for dismissal in the following subsections: (a) lack of integrity or immoral conduct in the workplace; (c) serious abuse or lack of respect or consideration due to the employer, his/her representatives or household; ... (i) serious failure to meet the obligations arising from the employment relationship – after implementing all the corresponding legal procedures, examining the grounds for dismissal and observing the time frames for bringing evidence in support of the allegations in strict compliance with the constitutional right of defence, decided that the request was admissible and that the PDVSA could dismiss the citizen concerned (Mr Iván Freites) with justification.
- 643.** The Government adds that in this decision the Inspectorate of Coro was urged duly to notify Mr Iván Freites, which was done on 23 December 2013, as can be seen from the corresponding file. Moreover, the file contains the request for certified copies of the administrative decision and other documents, dated 27 December 2013 and received by Mr Iván Freites on 6 January 2014.
- 644.** The Government explains that the decisions of the administrative bodies take effect for the parties once they have been published in the respective file, and it can be seen from this that the enterprise bringing the action was notified of the decision and proceeded to enforce it according to its rights as established by the legislation in force.
- 645.** Furthermore, the administrative procedures having been exhausted, the administrative decision indicates that Mr Iván Freites can appeal to the first-instance labour courts to have this decision declared null and void in the six months following the expiry of the decision deadline in the present proceedings.
- 646.** The foregoing shows that neither freedom of association nor due process was violated, since the corresponding legal procedures were followed and the citizen concerned (Mr Iván Freites) still has the right to avail himself of the legal remedies that he considers relevant.
- 647.** In its communication of 17 October 2014, the Government sent its observations regarding the allegation relating to the exclusion of union official Mr José Bodas from the negotiations for the new collective agreement with the PDVSA. The Government states that the negotiations for the collective agreement, which covers more than 90,000 workers in the country's main industry, began in November 2013 and were completed in March 2014, proceeding as normal and ending successfully with the signing of the collective agreement. The parties were represented by the PDVSA and the Venezuelan Oil

Board for the employers and, for the workers, by the FUTPV, the only representative trade union for the country's oil workers. At the outset of the negotiations, the FUTPV appointed a bargaining committee composed of 11 persons, which conducted the negotiations on behalf of the FUTPV and the oil workers.

648. The Government explains that the composition of the bargaining committee in collective negotiations by the workers is, in accordance with the labour legislation, an autonomous decision of the trade union organizations. Trade union autonomy is protected by the Venezuelan State from any external interference, including from the State itself.
649. The complaint expresses the grievance of a member of the FUTPV for not having been appointed to the bargaining committee for the negotiation of the collective agreement for the oil industry. The Government declares that it does not know, and has no wish to know, the reasons why the FUTPV, in full exercise of its trade union autonomy, excluded the citizen concerned (Mr José Bodas) from the bargaining committee and included other persons in it.
650. The Government adds that Mr José Bodas must address these grievances, if they are valid, to the FUTPV and not to the Venezuelan State, which is not and cannot be party to any decisions taken by this or any other trade union organization with respect to the persons due to represent it in collective bargaining.
651. The Government reiterates that the negotiations for the oil industry collective agreement went ahead without any delay, dispute or work stoppage.
652. However, while the collective bargaining was still in progress, a group of people (some oil industry workers and other individuals involved in local politics) held a "protest" on 3 February 2014 on the Antonio José de Sucre highway, which connects the city of Barcelona and the town of Puerto Piritu in the state of Anzoátegui in the east of the country, and in the vicinity of which is located the refinery complex of José, one of the biggest in the country.
653. The Government adds that the "protest" took place at the right-hand edge of the highway in front of the entrance to the refinery complex without incident until it was time for the change of shifts for the refinery workers. At that moment a group of demonstrators attempted to gain access to the highway to obstruct the free movement of vehicles, including the buses bringing the workers who were due to relieve those finishing their shift at the refinery. This disruption of freedom of movement along one of the main thoroughfares in the east of the country was totally unjustified; it was not called for or supported by the oil workers' unions or by the workers who were working normally at that time or were travelling along the highway to relieve their colleagues.
654. In the aforementioned circumstances, the Bolivarian National Guard, being responsible for safeguarding thoroughfares in the Bolivarian Republic of Venezuela, acted promptly to ensure the free movement of vehicles and was obliged to arrest the persons who insisted on obstructing the main road link. The persons arrested were removed from the location and transferred to the nearest Bolivarian National Guard post, before being released the following day. As regards the allegation in writing that the reason for the protest was the delay in concluding the collective agreement and the exclusion of Mr José Bodas from the bargaining committee, the Government considers this to be absurd.
655. The Government declares that there was never any delay in the collective bargaining (which was completed successfully only weeks later) and that the exclusion of Mr José Bodas from the bargaining committee had occurred almost three months earlier and was an internal union matter. Furthermore, in no way could the violent, unilateral closure of a

highway used by hundreds of people be considered “peaceful” since it is against the law of Venezuela and many other countries.

- 656.** In conclusion, the Government asserts that since this is not a trade union matter, the allegations should be dismissed as ill conceived.
- 657.** In its communication of 29 October 2014, the Government indicates that, according to information sent by the Public Prosecutor’s Office dated 28 October 2014, the case concerning the events that occurred on 3 February 2014 at the PDVSA refinery headquarters in Puerto La Cruz, state of Anzoátegui, relating to trade union officials: Mr Endy Alexander Torres Guarema, Mr Moisés Neptali Parica Pinto, Mr Leonardo Rafael Ugarte Rincón, Mr Emiro José Millán Gómez, Mr Bladimir Carvajal, Mr Omar David Parica Pinto, Mr Jesús Rafael Giraldo Rodríguez, Mr Gustavo José Pereira La Rosa and Mr William Eleazar Parica Pinto, has been concluded and has been ordered to be judicially shelved; accordingly, it was agreed to cancel the related injunction, in accordance with section 242(3) of the Basic Code of Criminal Procedure.

C. The Committee’s conclusions

Allegations of the dispersion of a trade union demonstration with the arrest of trade unionists

- 658.** *The Committee observes that in the present case the trade union organizations allege the dispersion by the Bolivarian National Guard of a peaceful trade union protest by workers at the PDVSA oil company refinery in the city of Puerto La Cruz on 3 February 2014, a protest that stemmed from the delay in concluding the new collective agreement and the exclusion of the general secretary of the FUTPV, Mr José Bodas, from the negotiating table. The dispersion resulted in the arrest of nine trade union officials or members who were detained until the following day and charged by the Prosecutor General’s Office with the criminal offences of resisting authority and engaging in coercion to stop work; according to the allegations, the criminal court adopted injunctions ordering the persons concerned to appear before the court every 30 days and imposing a ban on protests.*
- 659.** *The Committee notes the Government’s statements questioning: (1) the alleged delay in negotiations (according to the Government, collective bargaining began in November 2013 and went ahead without any delay, dispute or work stoppage and was completed in March 2014 with the signing of the collective agreement between the enterprise and the FUTPV); (2) the complainants’ grievance against the Government concerning the exclusion of the FUTPV general secretary Mr José Bodas from the negotiating table (according to the Government, any grievance relating to the exclusion of this trade union official from the bargaining committee should be addressed to the FUTPV, since it is an internal union matter which does not concern the Venezuelan State, which respects this federation’s autonomy and is not party to its decisions); (3) the supposedly peaceful nature of the protest (according to the Government, in no way could the violent, unilateral closure of a highway used by hundreds of people be considered “peaceful” since it is against the law of Venezuela and many other countries). The Committee notes the Government’s statement that the “protest”, by a group of oil industry workers and other individuals involved in local politics on the Antonio José de Sucre highway in the vicinity of the entrance to the José refinery complex, went ahead without incident until it was time for the change of shifts for the refinery workers; at that moment a group of demonstrators attempted to gain access to the highway to obstruct the free movement of vehicles (including the buses bringing the workers who were due to relieve those finishing their shift); this protest and disruption of freedom of movement was not*

called for or supported by the oil workers' unions. The Committee notes that, according to the Government, when freedom of movement on this highway (one of the main thoroughfares in the east of the country) was disrupted, the Bolivarian National Guard acted to ensure the free movement of vehicles, arrested the persons who insisted on obstructing the highway, and released them the following day (4 February 2014).

660. The Committee observes that the Government stated in its last communication that the Public Prosecutor's Office, by an official letter dated 28 October 2014, approved the lifting of the injunctions and shelved the case concerning the 11 persons in question.
661. In view of the above, since no offence was established on the part of the nine trade unionists who were exercising their right of protest, the Committee is bound to note with regret that they were detained and that injunctions were imposed restricting their trade union rights (ordering their periodic appearance before the judiciary and banning protests) and draws attention to the intimidatory effect of such measures on the exercise of trade union rights. In these circumstances, recalling that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 133], the Committee requests the Government to ensure that in future there is no recourse to measures restricting freedom or to injunctions ordering periodic appearances before the judiciary and banning protests where no grounds have been established for bringing criminal charges against trade unionists who are exercising their right to demonstrate.

Allegations relating to the dismissal of Mr Iván Freitas, president of SUTPGEF

662. The Committee notes that, according to the allegations, this trade union official was dismissed after 30 years of service at the Amuay Refinery on account of his trade union activities, including bringing a complaint before the ILO Committee on Freedom of Association in 2012 relating to violations by the PDVSA enterprise and filing complaints with the national authorities against PDVSA for non-compliance with labour legislation, and denouncing the state for failing to honour labour related commitments, as well as the enterprise's decision to exclude him from the bargaining committee for the collective agreement (despite the fact that he was a member of the executive committee of the oil industry federation that was negotiating). Moreover, according to the complaint, the dismissal was based on a procedure that did not respect due process and involved a lack of independence on the part of the labour administrative authority, including leaving him unable to avail himself of administrative and judicial remedies.
663. The Committee notes the Government's statements to the effect that: (1) the enterprise launched the procedure with the labour inspectorate for establishing misconduct and authorizing the dismissal of Mr Iván Freitas and, after following all the legal procedures (including with regard to notification), examining the grounds for dismissal and observing the relevant time frames in strict compliance with the constitutional right of defence, authorized the enterprise to dismiss Mr Iván Freitas on the following legal grounds: (a) lack of integrity or immoral conduct in the workplace; and (b) serious abuse or lack of respect or consideration due to the employer, his/her representatives or household and serious failure to meet the obligations arising from the employment relationship; and (2) Mr Iván Freitas has the right to appeal to the courts within six months if he considers that his rights have been violated.

664. *The Committee observes that there are contradictions in the versions of the alleged events presented by the complainant and the Government (which denies any violation of due process and the anti-union nature of the dismissal). The Committee notes with regret that the Government has merely referred to the generic grounds for dismissal cited by the enterprise without specifying the offences supposedly committed by this trade union official. Recalling that in a case in which trade union leaders could be dismissed without an indication of the motive, the Committee requested the Government to take steps with a view to punishing acts of anti-union discrimination and to making appeal procedures available to the victims of such acts [see **Digest**, op. cit., para. 807], the Committee, in order to have sufficient information to be able to examine this allegation, requests the Government: (1) to send a copy of Administrative Decision No. 075-01-2013, whereby the labour inspectorate authorized the dismissal of Mr Iván Freites, and to specify the offences supposedly committed by this trade union official; and (2) to indicate whether this trade union official has filed a judicial appeal against his dismissal and, if so, to send a copy of the corresponding ruling.*

The Committee's recommendations

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

- (a) The Committee requests the Government to ensure that in future there is no recourse to measures restricting freedom or to injunctions ordering periodic appearances before the judiciary, and banning protests where no grounds have been established for bringing criminal charges against trade unionists who are exercising their right to demonstrate.*
- (b) The Committee requests the Government: (1) to send a copy of Administrative Decision No. 075-01-2013, whereby the labour inspectorate authorized the dismissal of Mr Iván Freites, and to specify the offences supposedly committed by this trade union official; and (2) to indicate whether this trade union official has filed a judicial appeal against his dismissal and, if so, to send a copy of the corresponding ruling.*

CASE NO. 3082

INTERIM 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***

666. The complaint is contained in a joint communication dated 8 June 2014 from 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).

667. The Government sent observations in a communication dated 17 October 2014.

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

A. The complainants' allegations

669. In their communication dated 8 June 2014, UNETE, FUSBEC and SINTRAEGALLETERA allege that on 1 June 2012, following a breakdown of collective bargaining between the trade union and the enterprise, SINTRAEGALLETERA sent a list of demands to the Labour Inspectorate of Batalla de Vigirima in the state of Carabobo and this led to the initiation of conciliation proceedings. Furthermore in August 2012, the Assembly of Workers rejected a proposal to submit the dispute to arbitration and on 5 September 2012, the head of the labour inspectorate submitted a final report on the dispute, in which she stated that the workers involved could suspend their activities and operations (a legal strike) whenever they wished, subject to provision of the minimum essential services.

670. The complainant organizations allege that, on the morning of 3 December 2012, the Galletera Carabobo workers blocked the entrance to the Southern Motorway as a protest action in the hope that their demands as employees and workers would be taken into account. During this demonstration, however, Bolivarian National Guard troops appeared on the scene, violently broke up the demonstration and arrested UNETE coordinator Ms Marcela Máspero and four other trade union leaders, injuring Ms Máspero and Mr Julio Polanco. The two leaders, together with Mr Edgar Jiménez, Mr Roberto Yépez and Mr José Guillén, were taken to Regional Command No. 2.

- 671.** On 6 December 2012, the fourth chamber of the judicial district of the state of Carabobo labour court of first instance, located in Valencia, issued a judgment upholding an *amparo* (protection of constitutional rights) appeal brought by several Galletera Carabobo workers (seeking to exercise their right to work during the strike).
- 672.** On 10 January 2013, the People's Ministry of Labour and Social Security issued Decision No. 8147, in which it unilaterally ordered that the collective labour dispute be referred to an arbitration committee. It also ordered the Labour Monitoring Unit to visit the enterprise's Carabobo facility in order to ensure compliance with the terms and conditions necessary for the start-up of production and declared the industrial action closed.
- 673.** Thus, according to the complainants, the trade union's right to strike was violated by a Ministry of Labour decision ordering that the dispute be referred to an arbitration committee. These actions constitute a violation not only of constitutional rights, namely, the right to strike, but also of the right to have access to justice free of charge since the arbitrator selected to represent the trade union is charging 50,000 Venezuelan Bolivars (VEF) – the equivalent of 20 times a worker's monthly wage – in professional fees, which the trade union cannot afford.

B. The Government's reply

- 674.** In its communication dated 17 October 2014, the Government states that Galletera Carabobo and its trade union, SINTRAEGALLETERA, found it quite difficult to negotiate the collective agreement owing to disparities between the trade union's demands and the employer's proposals.
- 675.** On 1 June 2012, the union requested the labour inspectorate's authorization to convert the draft collective agreement under negotiation to a list of dispute grievances. The trade union's request was addressed, without halting the collective bargaining, until the end of June, when the employer indicated that it was impossible to reach an agreement.
- 676.** Once the collective bargaining had been suspended, the labour inspectorate proposed that the two parties should seek a solution to their dispute through arbitration. On 27 August 2012, the union reported that, in a general meeting, the workers had rejected the arbitration proposal and reiterated its request to initiate an industrial action. On 29 August 2012, the legal requirements for the exercise of the right to strike under the Constitution of the Bolivarian Republic of Venezuela were met. However, despite the work stoppage at Galletera Carabobo, the employer and the union were unable to produce dispute settlement proposals through negotiations.
- 677.** On 31 October 2012, a group of 183 Galletera Carabobo workers held a general meeting. In light of the continuing stalemate and so-called unconcerted action by the union, a proposal to end the strike was tabled and approved by the workers present. The union opposed this position and maintained that the general meeting was unlawful because it had not been organized by the trade union. Faced with a stand-off, a group of 161 workers brought *amparo* (protection of constitutional rights) proceedings before the courts, maintaining that the union was preventing them from exercising their right to work.
- 678.** The Government explains that, on the morning of 3 December 2012, a small group of workers and leaders of the trade union confederation UNETE (some 30 people) blocked the entrance to the Southern Motorway "as a protest action in the hope that their demands as employees and workers would be taken into account", as stated in the complaint. This motorway is the primary artery between the population centres and the main industrial areas situated along it; it is also a transport route from the centre of the country. The inexplicable closure of this important artery prevented thousands of workers from

reporting to work, night shift workers from returning home and hundreds of tonnes of food from being delivered to and from the centre of the country.

679. In the Government's view, a dispute between the employer of an enterprise with fewer than 300 workers and the union did not justify a protest action that harmed hundreds of thousands of people since the action itself was not remotely related to the employer or the enterprise, which is located several kilometres from the place where it occurred.
680. The Government indicates that officers of the Bolivarian National Guard, which is responsible for policing Venezuela's transport arteries, used this argument and others in an effort to convince the small group of people to leave and allow the passage of vehicular traffic. However, all attempts at mediation proved fruitless and when access had been blocked for an hour with the resulting traffic jam several kilometres long, the Bolivarian National Guard was forced to remove these people from the Southern Motorway in order to enforce the constitutional right to free passage. As a result of their obstruction of the action of the Bolivarian National Guard, five people were arrested; they were released that evening.
681. Furthermore, on 6 December 2012, the fourth chamber of the state of Carabobo labour court of first instance, located in Valencia, issued a judgment upholding the *amparo* appeal brought against the union by 161 workers. In light of the court's decision, most of the workers returned to work while respecting the right to strike of those who did not wish to return. In addition, on 6 January 2013, a group of 46 Galletera Carabobo workers who were still on strike, led by the Secretary of Finance of the union, went to the People's Ministry of Labour and Social Security in Caracas to demand the immediate "referral of the case for arbitration because, according to them, employment stability was being threatened by the measures taken and they firmly believed that the State would ensure that the workers' demands were met since the equitable distribution of wealth should be the primary goal of a Government that endorsed socialism". They also called on the then Minister, Ms María Cristina Iglesias, to speed up "... the compulsory arbitration envisaged in article 492 of the Labour and Workers Organization Act ...". The union posted this document on its website and, in response to the aforementioned petition, the People's Ministry of Labour and Social Security issued a decision ordering that the dispute be referred for compulsory arbitration. It is therefore totally untrue that the arbitration was imposed; rather, the request of the union was granted. Only then did the strike end.
682. Pursuant to the Labour and Workers Organization Act, in preparation for the arbitration, the parties were invited to select the arbitrators. SINTRAEGALLETERA chose one arbitrator from a list of three submitted by the employer and the employer chose another from a list of three submitted by SINTRAEGALLETERA; however, they were unable to agree on the third arbitrator. By law, the third arbitrator was chosen at random from a list of lawyers in private practice who had volunteered to serve as arbitrators in labour disputes.
683. The Government explains that the Venezuelan Government had nothing to do with selecting the arbitrators or with their decisions; thus, each of the arbitrators sets his or her professional fees which the parties must pay.
684. In light of the foregoing, the Government concludes that:
 - At no time was there a violation of the right to strike, which was freely exercised by the union members from October 2012 to January 2013.
 - As the claimant organizations recognize in their submission, the arrest of five people on 3 December 2012 was a consequence of the interruption of free movement of

traffic on the Southern Motorway. They refer to this action as a strike against the company but have yet to explain how blocking traffic on a motorway several kilometres away from the enterprise was in any way related to the dispute that was ongoing at the time.

- The action taken by the Bolivarian National Guard in removing the people who were blocking traffic on the Southern Motorway on 3 December 2012 in no way violated the right to strike of the workers who were doing so at Galletera Carabobo, several kilometres away; the strike continued unhindered until January 2013.
- On 6 January 2013, 46 SINTRAEGALLETERA members submitted a public petition requesting the People's Ministry of Labour and Social Security to order compulsory arbitration. This petition was granted, the arbitration was ordered and, in accordance with the law, the strike was ended voluntarily at the request of the union members.
- The arbitrators were selected in accordance with the law, are independent of the Government and set the amount of their own professional fees, which must be paid by the parties with no State involvement.
- Lastly, the Government maintains that no act or omission by the Venezuelan Government can be portrayed as a violation of the principles of freedom of association, the right to organize or the right to strike. It therefore requests that the present complaint be closed.

C. The Committee's conclusions

Alleged imposition of compulsory arbitration by the authorities

685. *The Committee observes that, in the present case, the complainant organizations allege that the People's Ministry of Labour and Social Security violated the right to strike of the trade union SINTRAEGALLETERA, following a breakdown of collective bargaining with the enterprise Galletera Carabobo, by unilaterally referring the collective dispute for compulsory arbitration in January 2014 and that the arbitrator selected to represent the trade union is charging VEF50,000 – the equivalent of 20 times a worker's monthly wage – in professional fees.*

686. *The Committee takes note of the Government's statement that: (1) at no time was the right to strike violated; it was freely exercised without hindrance by the workers from October 2012 to January 2013; (2) on 31 October 2012, 183 Galletera Carabobo workers held a general (non-union) meeting and proposed that the strike be ended in light of the continuing stalemate and unconcerted action by SINTRAEGALLETERA. The trade union opposed this position. In response, 161 workers brought amparo (protection of constitutional rights) proceedings before the courts, requesting to be allowed to exercise their right to work; their appeal was upheld in a judgment dated 6 December 2012; (3) on 6 January 2013, 46 trade union members who were still on strike, led by the trade union's Secretary of Finance, petitioned the People's Ministry of Labour and Social Security in writing to request that the case be referred for compulsory arbitration; this petition was also posted on the SINTRAEGALLETERA website and was granted as a request by the trade union; only then did the strike end; and (4) contrary to the complainants' statements, the arbitrators themselves set their professional fees with no State involvement; the name of the arbitrator selected to represent the trade union was included in a list that the union had submitted.*

687. *The Committee notes that the trade union declared a strike, which began in October 2012 and continued until 9 January 2013, and observes from the Government's replies that the strike was challenged by many of the enterprise's workers, according to the Government, 185 of the nearly 300 workers who, at a non-union meeting, proposed that the strike be ended and/or by 161 workers who requested and were granted court enforcement of their right to work.*
688. *Concerning the Government's statement regarding the petition for compulsory arbitration that was submitted by 46 trade union members, led by one of the trade union's leaders, in early January 2013 and was posted on the trade union's website, the Committee is unable to determine whether – as the Government maintains – this was an official trade union petition or whether – as the complainant organizations maintain in their complaint (signed by the General Secretary of the trade union) – it was a unilateral action by the Ministry.*
689. *The Committee cannot discount the possibility of a disagreement between the trade union's leaders on the issue of compulsory arbitration. Given the contradictions between the allegation and the Government's reply and the fact that the strike did, in fact, take place from October 2012 to January 2013, the Committee requests the complainant organizations to provide additional information in respect of the allegations regarding arbitration and interference by the authorities.*

Alleged violent break-up of a trade union demonstration and arrest of trade unionists

690. *With respect to the allegation that, on 3 December 2012, Bolivarian National Guard troops violently broke up a demonstration by enterprise workers in Carabobo in support of their demands; that five trade union leaders (including UNETE Coordinator Ms Marcela Máspero) were arrested; that Ms Máspero and trade union leader Mr Julio Polanco were injured; and that Ms Máspero, Mr Polanco, Mr Edgar Jiménez, Mr Roberto Yépez and Mr José Guillén were taken to Regional Command No. 2, the Committee takes note of the Government's statements that: (1) a group of some 30 workers blocked the Southern Motorway at Carabobo as a protest action in the hope that their demands in the dispute with the enterprise (situated several kilometres away) would be taken into account, causing harm to hundreds of thousands of people and with a potential loss of hundreds of tonnes of food; (2) owing to this group's attitude, all mediation attempts by the Bolivarian National Guard using these arguments and others proved fruitless; it was therefore forced to remove the protesters in order to enforce the constitutional right to free passage; as a result of this interruption of the protest action, five people were arrested and released that evening; and that at no time did the National Guard prevent the exercise of the right to strike.*
691. *The Committee observes that the Government has not denied that the demonstration was a peaceful one and notes with regret that it has not replied to the allegation that the Bolivarian National Guard took violent action, injuring union leaders Ms Marcela Máspero and Mr Julio Polanco. The Committee observes that the five trade union leaders and members who were arrested and released on the same day were taken to Regional Command No. 2 in Carabobo, yet no grounds for filing charges against them were found.*
692. *The Committee regrets the alleged violent action and would like to point out that the intervention of the forces of law and order in trade union demonstrations should be in due proportion to the danger to law and order that the authorities are attempting to control and the Government 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 the demonstrators. Recalling that workers should enjoy the right to*

*peaceful demonstration to defend their occupational interests [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 133]. The Committee requests the Government to ensure respect for these principles.*

The Committee's recommendations

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

- (a) The Committee requests the Government to ensure that 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.*

Geneva, 5 June 2015

(Signed) Professeur Paul van der Heijden
Chairperson

Points for decision:

paragraph 101	paragraph 389
paragraph 115	paragraph 418
paragraph 135	paragraph 428
paragraph 170	paragraph 437
paragraph 181	paragraph 459
paragraph 200	paragraph 482
paragraph 210	paragraph 491
paragraph 234	paragraph 531
paragraph 267	paragraph 559
paragraph 282	paragraph 618
paragraph 329	paragraph 630
paragraph 353	paragraph 665
paragraph 371	paragraph 693