



Governing Body

329th Session, Geneva, 9–24 March 2017

GB.329/INS/12(Rev.)

Institutional Section

INS

Date: 13 March 2017

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TWELFTH ITEM ON THE AGENDA

Complaint concerning non-observance by the Republic of Chile of 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 Maternity Protection Convention (Revised), 1952 (No. 103), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151), made under article 26 of the ILO Constitution by a delegate to the 105th Session (2016) of the International Labour Conference

Purpose of the document

The Office communicates to the Governing Body the information provided by the Government of the Republic of Chile, as contained in the appendix to this document. It will be for the Governing Body to adopt the necessary decisions as to the procedure to be followed in respect of this complaint.

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

Main relevant outcome/cross-cutting policy driver: Outcome 2: Ratification and application of international labour standards.

Policy implications: None.

Legal implications: None.

Financial implications: Depending on the decision of the Governing Body.

Follow-up action required: Depending on the decision of the Governing Body.

Author unit: International Labour Standards Department (NORMES).

Related documents: GB.328/INS/18/1; GB.328/PV/Draft.

1. At its 328th Session (November 2016), the Governing Body had before it a report by its Officers regarding a complaint concerning non-observance by the Republic of Chile of 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 Maternity Protection Convention (Revised), 1952 (No. 103), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151), made under article 26 of the ILO Constitution by a delegate to the 105th Session (2016) of the International Labour Conference.¹
2. Having considered that the complaint was receivable in so far as it met the conditions established in article 26 of the ILO Constitution, the Governing Body: (a) requested the Director-General to transmit the complaint to the Government of the Republic of Chile, inviting it to communicate its observations on the complaint no later than 10 January 2017; and (b) placed this item on the agenda of the 329th Session (March 2017) of the Governing Body.
3. On 16 December 2016, the Director-General wrote to the Government of the Republic of Chile, informing it of the decision taken by the Governing Body and requesting it to communicate its observations on the complaint.
4. In a communication dated 10 January 2017, the Government transmitted its observations on the complaint. A copy of these observations is appended to the present document.
5. In accordance with article 26 of the Constitution, it is for the Governing Body to take the necessary decisions concerning future action on this complaint.

Draft decision

6. *In light of the observations of the Government, in particular concerning the labour law reform recently adopted, and the comments thereon by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Governing Body:*
 - (a) *invites the CEACR to continue its examination of any pending issues concerning the application of the Conventions concerned; and*
 - (b) *decides that the complaint not be referred to a commission of inquiry and that, as a result, the procedure under article 26 of the ILO Constitution be closed.*

¹ [GB.328/INS/18/1](#).

Appendix

Santiago, 10 January 2017

From: Francisco Javier Díaz Verdugo
Deputy Minister of Labour
Government of Chile

To: Ms Corinne Vargha
Director, International Labour Standards Department
International Labour Organization
Geneva, Switzerland

I take this opportunity to send you my best wishes and to acknowledge receipt of your Communication No. ACD 14-57 and of the attached complaint by a Workers' delegate of the Republic of Peru to the 105th Session of the Conference, Mr Nazario Arellano Choque, supported by the World Federation of Trade Unions, alleging that Chile's legislation is not in line with ILO Conventions Nos 87, 98, 103, 135 and 151 and requesting the appointment of a Commission of Inquiry.

At the 328th Session of the Governing Body, the complaint was declared receivable and it was decided that it should be forwarded to the Government of Chile, which was invited to communicate its observations by 10 January 2017.

The Government would like to make the following observations on the complaint submitted under article 26 of the ILO Constitution:

I. The complaint

The complaint made against the Government of Chile under article 26 of the ILO Constitution, alleging failure to comply with Conventions that have been ratified and are in force in Chile, is based on alleged non-observance of the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified on 1 February 1999; the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), also ratified on 1 February 1999; the Maternity Protection Convention (Revised), 1952 (No. 103), ratified on 14 October 1994; the Workers' Representatives Convention, 1971 (No. 135), ratified on 13 September 1999; and the Labour Relations (Public Service) Convention, 1978 (No. 151), ratified on 17 July 2000.

In particular, the complaint makes the following allegations:

- (a) Current legislation is in violation of Conventions Nos 87, 98, and 135.
- (b) Current legislation is in violation of Convention No. 103.
- (c) Current legislation is in violation of Convention No. 151.
- (d) The current instructional framework of the National Labour Directorate is in violation of Conventions Nos 87, 98, and 135.
- (e) "Violations by the Labour Minister", referring to statements made in 2012 by the then Labour Minister, Ms Evelyn Matthei, who allegedly said that inter-enterprise unions were "a scam with only one purpose: to allow their leaders to make deals on privileges".
- (f) Concerning a labour reform that was ongoing when the complaint was presented, challenges to several provisions, which were ultimately not adopted, concerning agreements on special circumstances for "standby" working days, emergency allocation of working hours, bargaining quorums and other issues.

II. General observations of the Government of Chile

Since the restoration of democracy in 1990, the Government of Chile has been making a great effort to extensively reform the legislation on freedom of association, collective bargaining and the right to strike and these reforms have been incorporated into the Labour Code. During this period, Chile has also completed ratification of all of the fundamental labour conventions and significantly improved the labour inspection system and the labour courts. The administrative directives of both the labour inspectorate and the labour courts are clear evidence of the rule of law that has prevailed in Chile since 1990.

The ILO has provided cooperation and assistance with these legislative reforms and with the development of labour policies, particularly in the case of the most recent labour reform modernizing the labour relations system under current President Michelle Bachelet. The details of these advances are set out in the comprehensive reports submitted to the Office for consultation by the respective supervisory bodies.

Specifically, over the past 25 years – that is, since the restoration of democracy – the Government of Chile has significantly amended the legislation on the right to organize and collective bargaining: Act No. 19069, Act No. 19759 and, most recently, Act No. 20940, which will enter into force on 1 April 2017 and was being processed when the complaint was presented.

Chile's maternity protection legislation is fully compliant with Convention No. 103 and, generally speaking, there are effective legal remedies for enforcement of the maternity rights established by law. Chapter II, Title II, of the Labour Code, on maternity protection, is binding on all public, semi-public, autonomous and municipal administration services; all industrial, extractive, agricultural and commercial services, establishments, cooperatives and enterprises, whether public, semi-public, autonomous, independent, municipal or privately-owned; and private corporate entities. In recent years, the rights established in the Code have been strengthened by Acts Nos 20545, 20671, 20764 and 20891, described below.

As explained in detail in the Government's periodic reports, Chile has been implementing the provisions of Convention No. 151 since it entered into force in 2001. Thus, here again, there is no reason to appoint a Commission of Inquiry to consider broad allegations on which no additional information has been provided.

III. The right to organize and collective bargaining

(a) *The 1990 labour reform, which led to the adoption of Act No. 19069*

During the first year of the democratic Government of President Patricio Aylwin and, specifically, in October 1990, the reform – which would establish rules governing the right to organize and collective bargaining that led to the adoption of Act No. 19069 – was introduced. The Act reflects the then Government's interest in progress regarding the right to organize and collective bargaining.

The Presidential Message that led to the adoption of Act No. 19069 began with the statement: "Labour institutions are of the utmost importance to both the functioning of a democratic system and the conditions that affect economic growth and the distribution of its outcome". It expressed support for progress in labour relations as one of its basic principles and maintained that Government intervention should not replace the role of the social partners in bargaining but should provide the parties with a regulatory framework for doing so.

Thus, the first democratic reform of Chile's labour relations system sought to regulate workers' right to bargain collectively through unions, facilitate the formation of unions,

significantly increase the number of issues subject to bargaining, prohibit the replacement of striking workers and change the rules of procedure in order to give the parties a level playing field and allow them to have a real influence by providing them with mechanisms, including mediation, that would motivate them to reach an agreement rapidly.

Obviously, not all of the proposals made by the Government of President Patricia Aylwin were accepted in their original form; an Act that represented significant progress in the right to organize was adopted but, with regard to collective bargaining, it preserved labour institutions such as the co-existence of trade unions with groups of workers united for the sole purpose of bargaining, replacement of striking workers and failure to recognize the right of inter-enterprise unions to bargain on behalf of their members.

(b) *The late-1990s labour reform*

During the second half of the 1990s, another labour reform was attempted. Its primary purpose was to address the most sensitive aspects of the labour relations system that Act No. 19069 had not succeeded in changing, which were rooted in the Labour Plan. There were delays in processing the draft legislation, which was ultimately not adopted owing to a lack of supporting agreements.

(c) *The post-2000 labour reform, which resulted in the adoption of Act No. 19759*

On 16 November 2000, the Government of President Ricardo Lagos Escobar issued a Presidential Message introducing draft legislation, the purpose of which was to significantly amend the Labour Code with regard to individual and collective rights. This draft legislation resulted in the adoption of Act No. 19759. The outcome of complex negotiations on the right to organize and collective bargaining, the Act represents progress in the areas of union autonomy and strengthening and protection of the right to organize; gives the labour inspectorate a mediation role in collective bargaining; and includes regulations designed to mitigate the harmful effects of some provisions that had been carried forward from the Labour Plan, such as replacement of striking workers and bargaining groups.

Among other things, as a result of the legislative debate, Act No. 19759 added article 314bis of the Labour Code, which partially regulates direct bargaining between bargaining groups and employers in order to ensure that workers united for the sole purpose of bargaining bring their unregulated bargaining into line with Convention No. 135. Direct bargaining by bargaining groups undermines the efforts of the company's trade unions because there are no regulations ensuring the autonomy of such non-union representatives and safeguards against employer interference are needed.

Act No. 19759 also established the right to receive information with a view to collective bargaining by adding new paragraphs 5 and 6 to article 315 of the Labour Code and incorporating specific provisions on bargaining by inter-enterprise unions into new articles 334bis and 34bis (A), (B) and (C). These regulations are a clear improvement over the previous legislation and provided a basis for discussion during the recent labour reform that resulted in the adoption of Act No. 20940.

(d) *The 2015 labour reform, which resulted in the adoption of Act No. 20940*

On 29 December 2014, the Government of President Michelle Bachelet introduced draft legislation modernizing the labour relations system; after 18 months of full and vigorous debate, it was adopted as Act No. 20940, which, in accordance with transitional paragraph 1 thereof, will enter into force on 1 April 2017.

As stated in Presidential Message No. 1055-362, the draft legal reform was introduced in fulfilment of the President's commitment to modernize Chile's labour relations system, thereby ensuring a proper balance between the parties and full respect for freedom of association pursuant to the Conventions on freedom of association in force in Chile.

During the drafting process, it was borne in mind that Chile's low rate of union membership was largely attributable to the fact that unions had accomplished very little since the entry into force of the 1979 Labour Plan and that some of the Plan's provisions, which are still in force and unchanged, have been the subject of repeated observations by the ILO supervisory bodies. In light of the foregoing, the draft legislation sought to remedy this conspicuous undermining of the trade unions, their entitlements and, ultimately, collective bargaining by establishing rules that make their legitimate activities a forum for dialogue with enterprises by specific, sustainable interlocutors while preventing entities such as bargaining groups from competing unfairly with trade unions so that the unions can bargain on better terms.

Among other things, in addition to the aforementioned union entitlements, the draft legislation focused on giving workers who, under the Labour Code, were excluded from bargaining – such as casual or temporary workers – greater bargaining rights; granting benefits to workers automatically by the mere fact of union membership; preventing employers from unilaterally extending benefits agreed with a union to other workers; entitling unions to receive information periodically from enterprises, particularly with a view to collective bargaining; establishing a bargaining floor at the outset of the process, even in the absence of a collective agreement; and introducing improvements on gender issues.

Clearly, all of these measures represent a significant change in the country's current labour relations model and a fresh start for workers' organizations by creating balance in a highly unequal model for bargaining and relations between the parties.

The draft incorporated several proposals made during social dialogue forums or by the Organisation for Economic Co-operation and Development (OECD), including the following:

- (i) A Presidential Advisory Council on Labour and Equity (the Meller Committee; its final report (2008) was entitled *Hacia un Chile más justo: trabajo, salario, competitividad and equidad social* ("Towards a more just Chile: work, wages, competition and social equity").

With regard to labour relations, the Council said that collective bargaining and workers' rights should be strengthened. The measures proposed included establishing an agreed adaptability system with the details to be established by agreement between the parties; taking steps to prevent misrepresentation through the artificial division of enterprises for the purpose of hindering collective bargaining; and preventing "stowaway" workers from benefitting from collective bargaining without assuming the costs and risks thereof.

- (ii) Agreement of intent between the Amalgamated Workers' Union of Chile (CUT) and the Confederation of Production and Trade (CPC), 2012.

With regard to collective bargaining and the right to organize, the two organizations agreed on the need to improve the regulatory framework for labour relations in Chile, particularly in the areas of collective bargaining and trade union activity, and decided to create institutional forums for encouraging and promoting the right to organize. To that end, they considered that the role of trade unions as the primary actors in collective bargaining must be reinforced; collective bargaining procedures must be further simplified; taking an enterprise's circumstances into account, its response to a draft collective agreement presented by the workers must maintain the conditions established in previous collective bargaining; the scope of the issues that a trade union or unions could raise during collective bargaining must be broadened; awareness of what trade unions did and the benefits of union membership must be raised; and a specific proposal on labour relations in the agriculture sector must be developed.

- (iii) Report on the status and functioning of Chile's labour market entitled *OECD Reviews of Labour Market and Social Policies: Chile 2009*.

According to the OECD, labour relations in Chile are generally confrontational and marred by lack of trust that ultimately undermines the country's development efforts. In order to remedy this situation, it is necessary to strengthen social dialogue mechanisms and provide a regulatory environment that reduces the poor and sporadic implementation of labour regulations by simplifying them and strengthening their enforcement, expanding the coverage of unions and business associations and creating an overall climate of trust, collaboration and consultation among the social partners.

Specifically, among other proposals, the OECD considers it necessary to implement new legislation in order to promote collective bargaining and to consider developing organizations for consultation and dialogue with unions and employers, improve the effectiveness of industrial relations, promote bargaining on issues other than wages (agreements on flexible working hours); strengthen trade unions; enhance the effectiveness of the labour inspectorate; and continue to simplify the judicial process.

- (iv) The most recent observations by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) concerning Conventions Nos 87 and 98, to which particular consideration has been given:
- (a) Legislation restricting the right to bargain collectively. Among the provisions mentioned are articles 85 and 302 of the Labour Code, under which apprentices and workers under contract solely to work on a specific task or activity or for a specific period are excluded from collective bargaining; and article 1 of the Code, which, by establishing an exclusion from its application, hinders the exercise of collective bargaining rights.
 - (b) Legislation restricting the exercise of freedom of association with regard to unions and collective bargaining. The provisions mentioned are articles 304bis, 315 and 320 of the Labour Code, which empower groups of workers to bargain collectively, since they may only do so pursuant to agreements and to articles 334 and 334bis in so far as they require various procedures and the employer's prior consent to bargain collectively.
 - (c) Legislation restricting exercise of the right to strike: Articles 372 and 373 of the Labour Code provide that strikes must be approved by an absolute majority of the enterprise's workers engaged in the bargaining; article 374 establishes that unless a strike is voted within three days, the employer's final offer shall be deemed to have been accepted; article 379 provides for a vote censuring the workers' bargaining committee; article 381 permits the replacement of striking workers where the employer's final offer meets certain conditions; and article 384 prohibits workers in certain categories and institutions from striking.

The draft legislation was discussed extensively by the Chamber of Deputies between 29 December 2014 and 17 June 2015. During the initial stage, public hearings gave the following institutions and individuals an opportunity to give their views on the proposal: the Confederation of Production and Trade (CPC); the National Union of Workers (UNT); the National Confederation of Trade Unions of Micro, Small and Medium-sized Enterprises, Self-employed Workers and Freelancers (UNAPYME); the National Coordinating Body of Inter-enterprise Trade unions (CSI); FORUS Ltd.; the Coordinating Body of Inter-enterprise Trade Unions; Francisco Tapia Guerrero, Professor of Labour Law; Marcelo Soto Ulloa, labour lawyer; the Amalgamated Workers' Union of Chile (CUT); the Chilean Federation of Industry (SOFOFA); the National Confederation of Micro, Small and Medium-sized Enterprises of Chile (CONAPYME); the National Chamber of Commerce (CNC); the National Confederation of Trade Unions and Federations of Workers in Trade and Services (CONFECOVE); Evelyn Matthei and Ricardo Solari Saavedra, former Ministers of Labour and Social Welfare; José Luis Ugarte Cataldo, academic and researcher in the field of labour

law; Andrea Repetto Lisboa, economist; Giorgio Boccardo Bosoni, Director of the Nodo Foundation Research Centre XXI and Professor at the University of Chile; the Freedom and Development think tank; the Sol Foundation; the Union of ASMAR Workers in Talcahuano; the Chilean Construction Chamber (CChC); the Association of Chilean Exporters (ASOEX); the Executive Secretary of the Standing Committee for Dialogue on Social and Labour Issues in the Fruit-growing Sector; Claudio Palavecino Caceres, Professor of Labour Law, University of Chile; the National Confederation of Workers in the Salmon Industry (CONATRASAL); the Chilean Chamber of Maritime Transport and Ports; the Salmon Chile trade association; Bernardo Fontaine Talavera, economist; the National Agricultural Society (SNA); the National Federation of Fruit-growers (FEDEFRUTA); the Union of Chilean Port Workers; the Association of Exporters of Manufactured Goods (ASEXMA); the Santiago Chamber of Commerce (CCS); Eduardo Caamano Rojo, Professor of Labour Law; María Ester Feres Nazarala, former manager; Emilio Morgado Valenzuela, lawyer and academic; Fabio Bertranou, Director of the ILO Country Office for the South Cone of Latin America and Kirsten Maria Schapira, specialist in international standards and labour relations; Andrés Marinakis, specialist in labour market policies and labour institutions; the Confederation of Trade Unions in the Banking Sector; Felipe Larrain, economist and researcher at the Latin American Centre for Economic and Social Policy, University of Chile (CLAPES UC); the Federation of Copper Workers (FTC); the Confederation of Chilean Port Workers (COTRAPORCHI); and the Autonomous Workers' Confederation (CAT).

Particularly noteworthy is the technical contribution made by the International Labour Standards Department in approving a definition of “minimum services” consistent with the CEACR guidance and rulings, which resulted in the parliamentary agreements needed for approval of the draft submitted by the executive branch.

Most of the changes in the draft were the outcome of dialogue between the Government and parliamentarians in light of the fact that Chile's Constitution limits parliamentary oversight on matters relating to collective bargaining. An appeal for constitutional review was brought before Chile's Constitutional Court by senators and deputies who were opposed to some aspects of the approved text, particularly those concerning trade union autonomy, the expansion of benefits and the right of inter-enterprise unions to receive information and to bargain.

In Judgments Nos 3016-2016 and 3017-2016 of 9 May 2016, the Court upheld part of the appeal; it deleted only the provisions of the draft that concerned trade union autonomy on the grounds that they were unconstitutional.

The Constitutional Court's judgment led the Government to issue a presidential veto in respect of the draft legislation in order to ensure that existing laws of unchallenged constitutionality remained in force, particularly as the draft legislation constituted a systematic regulation of all collective law institutions and, inevitably, any change in one of them would significantly modify the others.

In its presidential veto, the executive branch requested elimination of the provision imposing a bargaining quorum on enterprise trade unions and of agreements on special working conditions, which, in its view, could not exist without a guarantee that they could only be negotiated by trade unions.

The presidential veto was approved and, following the Constitutional Court's judgment on the compulsory constitutional oversight rules, discussion of the draft legislation was completed and it was promulgated and, ultimately, published in the *Official Gazette* of 8 September 2016 as Act No. 20940.

(e) Rules governing the right to organize and collective bargaining as from the entry into force of Act No. 20940, which modernized Chile's labour relations system

1. Expansion of the scope of collective bargaining:
 - (a) The exclusion established in current article 305, paragraph 1, of the Labour Code has been eliminated and the scope of bargaining broadened to include workers who are currently prevented from exercising this right, particularly apprentices in large enterprises (in order to negotiate common working conditions) and workers under contract solely to work on a specific transitional or temporary task or activity or for a specific period under a special scheme.
 - (b) The number of situations in which so-called “trusted workers” may be excluded, set out in article 305, paragraphs 2, 3 and 4, of the Code – which establishes a general restriction that affects only workers with explicit representational and management responsibilities in an enterprise, such as managers and assistant managers – is reduced. In small and micro-enterprises, this prohibition also includes trusted workers in senior positions.
2. Scope of collective bargaining in enterprises:
 - (a) **Autonomy:** It is understood that, pursuant to the Constitutional Court judgment that eliminated provisions on trade union autonomy and the right to bargain, workers have this right; Act No. 20940 merely regulates its exercise through a union. Collective bargaining by workers who have elected not to exercise their right through the intermediary of a trade union is unregulated; this is being evaluated by the Government and the social partners since it may hinder implementation of the new regulations.
 - (b) **Bargaining by a union:** Enterprise and inter-enterprise unions may bargain in a regulated (compulsory bargaining with the right to security of tenure and the right to strike) or unregulated (voluntary bargaining not subject to special rules) manner. Enterprise, workplace and inter-enterprise unions may bargain collectively.
 - (c) **Union representation:** Each union bargains collectively on behalf of its members. There is no change in a trade union's responsibility to represent its members “in the various collective bargaining forums, sign collective labour agreements concerning them, ensure the implementation of those agreements and assert the rights arising therefrom” (article 220, paragraph 1, of the Labour Code).
 - (d) **Bargaining level:** By law, regulated bargaining, which entails the duty to open and close bargaining and, in that connection, regulation and protection of the right to strike, is carried out at the enterprise level. There is no change in the voluntary nature of bargaining at the supra-enterprise level. It should be noted that the Constitutional Court, in its judgment, stated that bargaining at the supra-enterprise level was unconstitutional.
 - (e) **Collective bargaining by inter-enterprise unions:** Special rules govern bargaining by inter-enterprise unions and their members:
 - In order for an inter-enterprise union to bargain collectively, its members must be employed by enterprises in the same economic activity or category.
 - An inter-enterprise union must have the same minimum number of members in the enterprise with which it is bargaining as an enterprise union (article 227 is applicable).
 - In large and medium-sized enterprises, members of an inter-enterprise union may only bargain collectively through that union.

- In small and micro-enterprises, bargaining is voluntary or optional for employers. In the event that the employer refuses to bargain, the union’s members may submit a draft collective agreement and initiate regulated collective bargaining directly with the employer on the understanding that they constitute an enterprise union for the purposes of that bargaining.
 - An inter-enterprise union’s bargaining committee comprises the trade union leaders and delegates employed by the enterprise in which the bargaining is taking place.
- (f) Workers covered by a collective agreement: Workers covered by a collective agreement negotiated through a union may change their union membership (freedom of association) but will continue to be covered by the collective agreement until it expires.
3. Right to negotiated benefits set out in a collective agreement:
- (a) The general principle is that benefits under a collective agreement are granted to workers who were engaged in the collective bargaining from the beginning. The workers covered by collective bargaining are those who are members of the union engaged in the bargaining and who are not covered by a collective agreement currently in force.
 - (b) Union membership during collective bargaining: Also covered by a collective agreement are workers who are not currently covered by such an agreement and who become members of a union and join the ongoing bargaining within five days of the date on which the draft agreement was presented.
 - (c) Right of unaffiliated workers to benefits negotiated by a union by agreement between the parties, either during or after bargaining: Unions and employers may agree to extend benefits under a collective agreement to all or some of the enterprise’s unaffiliated workers. In order to receive those benefits, workers must agree to the extension and undertake to pay all or part of the dues of the union in question pursuant to the expansion agreement. Pacts extending the benefits to include unaffiliated workers are known as “benefit extension agreements”.
 - (d) Benefit extension agreements and statements of failure to extend them constitute binding provisions of a collective agreement. The parties must state in the agreement whether they have agreed to extend those benefits.
 - (e) Regulation of benefit extension agreements: Extension agreements between a union and an employer must establish objective, general and non-arbitrary criteria for extending benefits to unaffiliated workers.
 - (f) The extension of negotiated benefits in the absence of an extension agreement constitutes an anti-union practice.
 - (g) Unilateral extension of an agreement’s wage adjustment provisions in response to changes in the Consumer Price Index (CPI): Employers may apply (extend) the wage adjustment provisions of a collective agreement to all of the enterprise’s workers – including unaffiliated workers – in response to changes in the CPI. In order for the employer to do so, the adjustment provisions must have been offered in the response to the draft collective agreement.
 - (h) Individual bargaining: Without prejudice to the rules of collective bargaining, individual agreements between workers and employers concerning wages or wage increases based on the worker’s skills, qualifications, suitability, responsibility or productivity do not constitute an anti-union practice.
 - (i) Individual bargaining by unionized workers: Employers and unionized workers are also free to bargain individually. The draft legislation prohibits it only while the union of

which the worker is a member is engaged in collective bargaining (in such cases, individual bargaining constitutes an unfair practice on the employer's part).

4. Expansion of the right to be informed in order to improve the quality of bargaining and of labour-management relations:
 - (a) Types of information: There are two kinds of information, periodic and with a view to collective bargaining. The first is intended to improve ongoing interaction between the trade union and the employer while the second is designed to ensure that workers have useful background information in order to prepare and provide technical support for their draft collective agreement.
 - (b) Right to be informed periodically: Employers must provide their unions (only enterprise unions) with accounting and financial data, segmented according to the size of the enterprise and the applicable income tax regime.
 - (c) Duty to provide information with a view to collective bargaining: Employers must provide specific and necessary information on the enterprise to be used in preparing for collective bargaining. The type and content of the information reflect the size of the company.
 - (d) Information to be provided periodically by large enterprises: Balance sheet, financial statements (audited where available), data that the enterprise is required to provide to the Securities and Insurance Commission (SVS) and public information.
 - (e) Specific information to be provided with a view to bargaining in large and medium-sized enterprises: The discounted value of the benefits included in the collective agreement currently in force, an updated payroll showing the wages of the union's members, the total labour cost (total number of the enterprise's employees) and future investment policies (where the employer does not consider them confidential).
 - (f) Information to be provided periodically by medium-sized, small and micro-enterprises: These enterprises must provide their enterprise unions with annual information on the income and expenditure that they report to the internal revenue authority for income tax purposes.
 - (g) Specific information to be provided with a view to bargaining in small and micro-enterprises: Payroll showing the remuneration paid to the union's members, broken down by wages, the discounted value of the benefits included in the collective agreement currently in force and the total labour cost.
 - (h) Timing of the provision of periodic information: Large enterprises must provide this information annually; other enterprises must provide it within 30 days of submitting their annual tax return.
 - (i) Timing of the provision of specific information: In large and medium-sized enterprises, it must be provided within 30 days if requested prior to the expiration of the collective agreement or, in the absence of such an agreement, at any time. In medium-sized and small enterprises, it must be provided within 30 days of the date on which it is requested.
 - (j) Obligation to provide information to recently-established unions: Large enterprises must provide periodic information within 30 days of receiving notification of a union's establishment.
 - (k) Specific information with a view to bargaining by bargaining groups: Groups that bargain collectively are entitled to request the employer to provide, for bargaining purposes, specific payroll information for the workers that they represent, with prior authorization from those workers, and the discounted value of the current collective agreement.

- (l) Information on positions and responsibilities: Once a year, enterprise unions may request large enterprises to provide information on the wages paid to workers, broken down by position and responsibility as shown in the list of positions and responsibilities contained in their internal regulations (article 154, paragraph 6). In the case of medium-sized enterprises, this information may be requested as background for collective bargaining. The information must be provided without the names of the workers concerned.
 - (m) Protection of information on wages (payroll): Employers must only provide information that the union's statutes expressly authorize it to request or with the workers' authorization. In the case of bargaining groups, each worker's authorization is required.
 - (n) Protection of information on positions and responsibilities: Where the enterprise employs five or more workers in each position or responsibility, this information must be provided without the names of the workers concerned. The information on individual workers must be kept confidential and the employer's right to confidentiality must not be violated.
 - (o) Penalties: Failure to comply with the employer's obligation to provide information and violation of the duty of confidentiality by a union constitute anti-union or unfair practices, respectively.
 - (p) Appeals to the labour inspectorate and complaints before the courts: Where an employer fails to meet its obligation to provide information, the labour inspectorate may take action and request the intervention of the competent court, which, as a first step, may order that the information be provided.
5. Simplification of the procedure for regulated collective bargaining:
- (a) Current situation: The collective bargaining procedure limits the opportunities for direct dialogue between the parties, giving priority to procedures rather than substantive action.
 - (b) New procedure: The procedure is simplified and set out in sequential order. The principle of procedural good faith – the duty of the parties to meet their obligations and the established deadlines without creating impediments that reduce the opportunities for agreement between them – is recognized.
 - (c) Excessive regulations and formal requirements for the draft collective agreement and the employer's response are eliminated.
 - (d) Challenges and other complaints: Complaints of illegality are replaced by a procedure for challenging union membership lists and by other types of complaint related to collective bargaining.
 - (e) The rule contained in article 372, on which the CEACR has commented, has been changed by eliminating the prohibition against holding assemblies on the day of an election and requiring employers to make it easier for workers to vote.
 - (f) Article 373, to which the CEACR has objected, has been amended by establishing a quorum for calling a strike: the majority of the engaged involved in bargaining must vote to strike. However the article includes a rule whereby employees who are not currently working because they are on medical leave, because it is a legal holiday or because, at the enterprise's request, they are away from their habitual place of work are not counted in the number required for a quorum.
 - (g) The rule contained in article 374, which, as the CEACR has noted, imposes restrictions on strikes by requiring an additional quorum for putting them into effect, has been eliminated and the time period for striking has been extended from three to five days.

- (h) The rule on the censuring of a bargaining committee, contained in article 379 and on which the CEACR has also commented, has been eliminated.
 - (i) Voting on a new final offer: Employers may submit additional offers to a vote of the assembly of union members.
 - (j) Mediation: The parties are given mediation options; they may request voluntary mediation at any time by mutual agreement between the parties. Mediation is compulsory at the request of either party once a strike has been called.
 - (k) Arbitration: The regulations governing arbitration (by a collegiate arbitral tribunal) have been modernized in order to make it a dispute settlement option. Provision for both voluntary and compulsory arbitration is made. For bargaining in enterprises with fewer than 200 workers (medium-sized, small and micro-enterprises), the parties have access to an arbitral body at no cost.
6. Balance between the parties: The right to strike and minimum services:
- (a) The right to strike: Striking is recognized as a right exercised collectively by workers.
 - (b) Prohibition of the replacement of workers: Employers may no longer replace striking workers and are expressly prohibited from doing so.
 - (c) Penalty for replacing striking workers: Workers may report violations of the prohibition of replacement to the Labour Directorate, which must order the immediate removal of the replacement workers and, if this is not done, refer the case to the labour courts. This also constitutes a serious unfair practice for which the perpetrator is penalized (a fine for each of the workers replaced).
 - (d) Recognition of non-striking workers' right to work: Exercise of the right to strike must be balanced against the right to work of workers not involved in the strike, who are entitled to continue to provide the services agreed in their employment contracts. To that end, employers are legally empowered to take the "necessary steps" and to modify shifts or working hours without impinging on the strike.
 - (e) Collective bargaining and strikes in contracting and subcontracting enterprises: Collective bargaining in a contracting or subcontracting enterprise has no impact on the management rights of the principal enterprise. Therefore, the latter may ensure performance of the subcontracted work or services interrupted by a strike, either directly or through a third party.
 - (f) Enterprises that do not have the right to strike: Under article 9, paragraph 16, of the Constitution, employees of corporations or enterprises that provide public utility services the interruption of which would seriously harm public health, the country's economy, public supplies or national security are prohibited from striking. The draft establishes a procedure for identifying the enterprises in which strikes are prohibited and legal remedies for employers or individuals affected by a strike.
 - (g) Compulsory arbitration: An effective compulsory arbitration procedure has been established for employees who are not entitled to exercise the right to strike: an arbitral body governed by new regulations that encourage diversity, experience, reputation and independence in its members.
 - (h) Definition of "minimum services": Without affecting the right to strike as such, a union's bargaining committee must provide, for the duration of the strike, workers to provide such minimum services as are strictly required in order to protect the enterprise's assets and facilities, prevent accidents (minimum safety services) and ensure that public utility services are delivered; the basic needs of the population – including those related to life, safety and public health – are met; and the environment and sanitation are not harmed (minimum operational services). In determining their number, criteria such as the size and characteristics of the enterprise or establishment and the work to be done may be taken into account.

- (i) Emergency teams: Minimum services shall be provided by one or more “emergency teams”, which must be composed of workers engaged in the bargaining.
- (j) Identification of minimum services: This must be done by agreement between the parties before collective bargaining commences and at least 180 days prior to the expiration of the current agreement. If they are unable to agree, the question shall be settled by the labour inspectorate or the Labour Directorate, as appropriate, following an inspection conducted for that purpose and consultation of the technical reports of the regulatory and/or inspection agencies.
- (k) Right of individual workers to return to work during a strike and conditions under which they may do so: Individual workers are entitled to resume their duties 15 days (in the case of large and medium-sized enterprises) or five days (in the case of small and micro-enterprises) after a strike has begun, provided that the employer’s final offer provides for maintenance of the current contract (bargaining floor) and of the future CPI for the duration thereof. If the employer’s final offer does not meet those conditions, the workers may return to work 30 or 15 days after the strike has begun in the case of large or medium and small or micro-enterprises, respectively. Individual workers who elect to resume their duties do so under the conditions contained in the employer’s final offer and thereafter are no longer engaged in the ongoing collective bargaining.

7. Bargaining floor:

- (a) The employer’s response: The employer’s response to the workers’ proposal may not set conditions lower than the bargaining floor.
- (b) Bargaining floor: Where a current collective agreement is in force, the bargaining floor constitutes conditions identical to those established therein, in the absence of such an agreement, it constitutes the employer’s response. The employer’s proposal may not provide for benefits lower than those that have been granted on a regular or periodic basis to the workers represented by the union.
- (c) Exclusions: Adjustments, the real increase established in the current contract, agreements on special working conditions and the end-of-bargaining bonus are deemed to be excluded from the conditions that constitute the bargaining floor.
- (d) Subsequent negotiations: After the employer’s response has been submitted, the parties may negotiate changes in the conditions that constitute the bargaining floor. Through these changes, the parties may eliminate, lower, replace, adjust or add benefits; they may also agree to lower the bargaining floor.
- (e) Right to accept the bargaining floor: At any time during the negotiations, including after a strike has been called and has begun, workers may end the bargaining process by accepting the bargaining floor for a period of 18 months. The employer may not refuse unless the parties have agreed to lower the floor for economic reasons.

8. Expansion of the scope of bargaining:

- (a) Expansion of the scope of bargaining in enterprises with representative union membership: unions and employers may negotiate agreements on special working conditions where 30 per cent of the enterprise’s workers are members of the union.
- (b) Representation: Each union represents its members when negotiating agreements.
- (c) Impact of agreements on special working conditions: These agreements apply only to the enterprise’s workers who are members of the unions that negotiated the agreement; other workers must consent individually.
- (d) Issues that can only be negotiated where there is representative union membership (adaptation agreements):

- The issues subject to negotiation are: agreements on the weekly distribution of working hours.
 - Agreements on workers with family responsibilities.
- (e) Agreements on the weekly distribution of working hours: The parties may agree to distribute the normal weekly working hours (up to 45 hours) over four days (whereas, under the Code, they may only be distributed over five or six days). In such cases, the working day shall not exceed 12 hours of actual work, including regular hours, overtime and rest periods. If the working day is longer than ten hours, an hour of rest owing to its length must be agreed.
- (f) Agreements on workers with family responsibilities: Unions and employers may sign agreements authorizing workers with family responsibilities to have a schedule that includes both on- and off-site work. Such agreements may also be negotiated for young workers who are still in school, women, persons with disabilities and other groups of workers as established by mutual agreement between the employer and the union.

Once such an agreement has been signed, workers must submit to the employer a written request to be covered by it and the employer must respond in writing. The employer may accept or reject the request. Workers may decide unilaterally to return to the original conditions set out in their employment contracts after giving the employer at least 30 days' written notice. If the request is accepted, an appendix to the individual employment contract containing the following information must be signed:

- The place or places other than the enterprise in which the worker will be working, which may be the worker's home or another location agreed with the employer.
 - Any necessary adjustments in working hours.
 - The manner in which the employer will monitor and supervise delivery of the services agreed with the worker.
 - The period of validity of the agreement.
- (g) Expansion of issues: The following issues, among others, need not be negotiated in enterprises with representative union membership (such agreements may be negotiated with unions or bargaining groups):
- Agreements on balancing work with family life.
 - Welfare services.
 - Equal opportunity plans.
 - Gender equity plans.
 - Dispute settlement mechanisms.
 - Training and retraining plans.
 - Joint parental responsibility.
- (h) Registration and monitoring: Employers must register these agreements with the corresponding labour inspectorate, which will monitor their implementation and enforcement.

9. Equality of opportunity:

- (a) Representation of affiliated workers on the union bargaining committee: A woman worker from the negotiating union or unions must be a member of the bargaining committee if, under the general rules, it does not include a woman. To that end, a woman must be elected to the committee, in accordance with the relevant statutes. Women members of such committees are granted an additional 90 days of security of tenure.

- (b) Information on equal pay: unions may request the enterprise to provide information on equal pay for men and women.
- (c) Gender equity: It is expressly stated that “gender equity” must be incorporated into any equal opportunity plan negotiated.
- (d) Quota for women in unions: the draft establishes a quota whereby at least a third of the members of the governing boards of rank-and-file unions and of trade union federations, confederations and organizations must be women where their numbers permit.

10. Regulation of union activities:

- (a) Quorum for the formation of a union: Article 227 is amended with the addition of a representational requirement for the formation of unions in enterprises with no more than 50 workers: eight of those workers may form a union, provided that they account for at least 50 per cent of the workforce (at present, eight workers in such enterprises may form a union and bargain collectively, regardless of the percentage of its total workers for which they account). In practice, this rule means that, for example, if an enterprise had ten workers, eight of them could form a union; if it had 20, 30, 40 or 50 workers, a minimum of ten, 15, 20 and 25, respectively, would be required. In calculating the total number of an enterprise’s workers, those who are prevented from bargaining collectively are not counted, without prejudice to their right to freedom of association.
- (b) Union representatives in inter-enterprise unions: The eligibility and proportionality rules have changed; eight to 50 workers may elect one union representative; 50 to 75 workers may elect two and 76 or more may elect three. If an enterprise’s workers have already elected one or more union representatives, their number shall be reduced in proportion to the total number of representatives that the workers are entitled to elect.
- (c) Grounds for the termination of trade union rights: Withdrawal from a union and cessation of a union’s existence are included as additional grounds for the termination of union rights.
- (d) Security of tenure arising from a union’s establishment: Workers who agree to form an inter-enterprise union in order to enjoy security of tenure must request the labour inspectorate to designate a certifying officer for that purpose. This change ensures that the date from which security of tenure must be granted is clearly established.
- (e) Anti-trade union and unfair practices: The terminology has been harmonized and standardized by defining “anti-union practices” as violations of freedom of association by an employer, a trade union or workers outside the framework of collective bargaining and “unfair practices” as violations of the principle of good faith during collective bargaining.
- (f) New forms of anti-union practice by an employer:
 - dismissing workers for having stated their intention to unionize;
 - refusing to reinstate a trade union leader with security of tenure;
 - granting or agreeing to grant the same benefits as those established in a collective agreement to unaffiliated workers;
 - failing to deduct trade union contributions or the contribution required under an extension agreement.
- (g) New form of anti-union practice by a worker or a trade union:
 - exercising union rights or security of tenure unlawfully or deceitfully.
- (h) New types of unfair practice by an employer:

- replacing striking workers;
 - replacing striking workers with workers from another establishment who are not involved in the strike;
 - offering, granting or agreeing to grant wage or benefit increases to unionized workers individually during collective bargaining;
 - using physical force or psychological pressure.
- (i) New type of unfair practice by a worker or trade union:
- using physical force or psychological pressure.
- (j) Penalty regime for anti-union and unfair practices: Penalties for anti-union and unfair practices are determined in light of the size of the enterprise and the number of workers affected. For repeat offenders, the fine is increased only in the case of large and medium-sized enterprises. A specific new range of fines for anti-trade union and unfair practices, depending on the size of the enterprise, has been introduced:
- in micro-enterprises, a fine of 5 to 25 monthly index-linked units of account (UF);
 - in small enterprises, a fine of UF 10 to 50;
 - in medium-sized enterprises, a fine of UF 15 to 50;
 - in large enterprises, a fine of UF 20 to 300.
- (k) Anti-trade-union dismissal: the definition of this offence has been modified to include retaliation for union membership, the exercise of union activities and engaging in collective bargaining where security of tenure (reinstatement with the enterprise) is standard. This rule is applicable not only to dismissal, but also to termination of the employment relationship (for example, failure to renew a contract).
- (l) Hours of trade union work: In light of its intrinsic purpose, the time allocated to union activities, currently known as “trade union leave” will henceforth be known as “hours of trade union work”.
- (m) Increase in trade-union-related training leave: In large enterprises, the time allocated to trade union-related training and education is increased from one to three weeks per calendar year.

12. Voluntary bargaining by federations and confederations:

- (a) Voluntary bargaining: This means bargaining under a procedure that reflects its voluntary nature: without the option of striking and without security of tenure. The parties are free to determine its length.
- (b) Rules of procedure: Bargaining is direct and not subject to rules; however, in order to ensure that the parties are serious in their desire to negotiate agreements as needed, they are required to submit their proposals and responses in writing and, in light of the voluntary nature of this process, it may be initiated by either of the parties. There is no obligation to reach agreement and there are no dispute settlement bodies other than the will of the parties.
- (c) Employer incentives: For employers, the incentive is to have a collective agreement on benefits agreed with a high-level organization with which they can also negotiate agreements on special working conditions without the standard of representativeness required for bargaining at the enterprise level.
- (d) Rules for the application of instruments: The mere existence of a pact does not render it binding on affiliated or unaffiliated workers. In order for an agreement or pact to apply to its members, a union must already belong to the federation or confederation that negotiated it and must then agree to accept it. In order for unions that are not members of a federation or confederation to accept an agreement or pact on special

working conditions, they must first join the organization that negotiated it and then accept it as provided in article 412. This is not expressly stated but arises from the provisions of the article and the general rules and is designed to avoid disagreements between organizations. The procedure may also be used by unaffiliated workers in enterprises that have no trade union.

- (e) Worker incentives: For workers, the incentive is to have collective agreements establishing benefits and the possibility of having pacts on special working conditions negotiated by high-level organizations that give optimal representation to their interests. Where an instrument includes provisions that constitute an improvement in their working conditions and remuneration, this is also an incentive.

13. Trade Union and Cooperative Labour Relations Fund:

- (a) A Trade Union and Cooperative Labour Relations Fund has been established in order to provide funding for trade union-related training projects, programmes and activities and to promote social dialogue and the development of cooperative labour relations between employers and workers.
- (b) These resources will be allocated by the Office of the Deputy Minister of Labour through an open application process and the general allocation criteria will be set annually by the Higher Labour Council.

14. Higher Labour Council:

- (a) Mandate of the Higher Labour Council: A tripartite advisory body has been established in order to cooperate in the development of public policy proposals and recommendations designed to strengthen and promote social dialogue and a culture of fair, modern and collaborative labour relations in Chile.
- (b) Members: The Council will have nine members: three appointed by the Government; three by the country's most representative employers' organizations, including at least one representative of smaller enterprises; and three by the most representative trade union organizations.
- (c) The Council's technical secretariat will be located in the Office of the Deputy Minister of Labour.

IV. Maternity protection

With regard to maternity protection, the provisions of the Labour Code and supplemental legislation fully meet the standard set by Convention No. 103. The following is a summary of these entitlements:

Prenatal and postnatal maternity leave: Chile's legal system provides for six weeks of maternity leave before and two weeks after the date of delivery, known, respectively, as prenatal and postnatal rest periods.

Additional prenatal leave: Prenatal leave may be supplemented and/or extended in the event of a pregnancy-related illness or where childbirth occurs after the six weeks of prenatal leave, respectively.

Additional postnatal leave: Postnatal leave may also be supplemented in the event of a childbirth-related illness or a premature or multiple birth. Biological and adoptive fathers are entitled to five days of childbirth or adoption leave, as appropriate.

Postnatal parental leave: Act No. 20545, published in the *Official Gazette* of 17 October 2011, modified the rules governing maternity protection by establishing a flexible form of postnatal parental leave, which had not existed in the past. Parental leave is granted for the 12 weeks following the birth and includes the right to return to work part time (half-days), in which case the leave period is extended to 18 weeks.

Option of postnatal parental leave for fathers: Where both parents are working, either of them, at the mother's choice, may use the remainder of the applicable period of postnatal parental leave as from the seventh week thereof. The four weeks used by the father must be taken at the end of the leave period and entitle him to the maternity benefit, calculated on the basis of his wages.

Maternity rights and postnatal parental rights that may be exercised by fathers: Where the mother dies in childbirth or during the postnatal leave period, the child's father or guardian is entitled to all or the remainder of the postnatal leave, as appropriate, and to the mother's security of tenure and maternity benefit. The same is true of the postnatal parental leave and the maternity benefit for this period.

Right to security of tenure: Notwithstanding any provision to the contrary, security of tenure during prenatal, postnatal, additional postnatal and postnatal parental leave is guaranteed.

The right to feed a child: Women workers are entitled to at least one hour per day in order to feed their children under two years of age. This right may be exercised at any time during working hours and, at the worker's request, may be divided into two periods, delayed or advanced by half an hour or taken in a single unit at the beginning or end of the working hours.

Maternity benefit: During prenatal and postnatal maternity leave; additional, extended or prolonged leave; parental leave; and the one-year leave granted in order to care for a seriously ill child under one year of age, the State grants a tax credit that is intended to replace the wages that the employer does not pay during these periods in which no work will be performed. Men and women employees and self-employed workers who make social security contributions are entitled to receive this benefit up to a maximum of UF 60.

In the private sector, the difference between the benefit and a woman worker's total wage may be paid by the employer, but such pacts are uncommon.

Pursuant to article 153 of Ministry of Health Legislative Decree No. 1 (2005) and Act No. 20545, as amended by Act No. 20981, public servants who fall within the scope of the Administrative Statute are entitled to have their full wage paid by their employer during sick leave, maternity leave (prenatal, postnatal and postnatal parental) and leave granted to care for a seriously ill child under one year of age.

Leave granted to care for a seriously ill child under one year of age: The maternity benefit scheme also includes parental leave to care for a sick child. In the case of a seriously ill child under one year of age, this leave is accompanied by a benefit.

The right to childcare: Domestic law entitles women employed by enterprises with 20 or more workers and with children under two years of age to childcare. To that end, employers must maintain a childcare facility attached to the enterprise or provide the service in some other form and cover the cost of the means of transport used for the child's travel to and from this establishment.

V. Labour relations in the public service

Since 1990, there has been a clear improvement in Chilean public servants' exercise of the right to freedom of association. In particular, with regard to the rights established in Convention No. 151, Chile's national practice fully meets its obligations under that Convention, as, moreover, it has stated in its reports thereon.

Since the right to strike is not regulated, it is exercised aggressively during bargaining in Chile's public sector without additional restrictions, although President Michelle Bachelet has expressed an interest in assessing mechanisms for institutionalizing exercise of the right to freedom of association in the sector.

In fact, institutionalization of the right of public servants to bargain collectively is one of the pending items on the current Government's agenda and is included in the Memorandum of Understanding signed by the Government and the Public Sector Board in November 2014, but it has proved impossible to conclude an agreement with the unions or to gain their support for this initiative because they have given priority to progress on other items on the joint agenda set out in the Memorandum. It must be understood that the Government cannot move forward with regulations without exhausting the effort to reach agreement with the unions in the sector. At meetings of the Senate Committee on Labour and Social Welfare – to which they were invited specifically in order to give their views on the draft constitutional reform legislation, which would lift the prohibition of strikes established in article 19, paragraph 16, of the Constitution (*Official Gazette* Nos 6218-13, 9267-13 and 9370-13) – the unions have maintained that there is no need to regulate strikes.

VI. Specific observations of the Government of Chile

(a) Chilean law and Conventions Nos 87, 98 and 135

Observation of the Government of Chile: With respect to Conventions Nos 87, 98 and 135, as stated in the general observations and in the section on the right to organize, the Government of Chile has submitted various pieces of draft legislation, two of them pursuant to these ILO Conventions on freedom of association, in an effort to bring Chile's domestic law into line with the standards and mandate arising from the Conventions and with the observations made by the CEACR. Act No. 20940 constitutes significant progress in regulating inter-enterprise unions and exercise of the right to strike.

(b) Institutional framework of the Labour Directorate and Conventions Nos 87, 98 and 135

Observation of the Government of Chile: Concerning the institutional framework of the Labour Directorate, the complaint mentions several of the supervisory body's opinions and directives regarding current labour law; the provisions on collective bargaining were comprehensively amended by Act No. 20940, which will come into force on 1 April 2017.

The Labour Directorate's functions are set out in the Labour Code and in the Directorate's Organization Act, Ministry of Labour and Social Welfare Legislative Decree No. 2 (1967). Specifically, article 476, paragraph 1, of the Labour Code states: "The Labour Directorate shall be responsible for compliance with and interpretation of the labour laws, without prejudice to the responsibilities of other administrative bodies under the legislation governing them."

Similarly, article 1 of the Labour Directorate Organization Act, in establishing the Directorate's powers and responsibilities, states that it is mandated to interpret the labour laws in accordance with the current legislation, either on its own initiative or upon request, through directives that establish consistent, uniform administrative case law and provide monitoring guidelines that are compulsory both for the service concerned and for third parties involved in the case in question. All of these directives may be challenged in the courts, which ultimately resolve any disputes. Doctrine and rulings that are not overturned by the courts or constitute the final judgment in a specific case may be applied to similar situations, as stated in Directive No. 4435/210 of 28 November 2001: "Directives of the Labour Directorate shall be applied in respect of and have an impact on the individuals and situations that led to their issuance on the understanding that their doctrine shall be applicable to similar situations."

In any event, the Labour Directorate is firmly committed to freedom of association and its efforts to defend the relevant principles are consistent with the legislative and constitutional provisions currently in force and with the international conventions and

treaties ratified by Chile, including ILO Conventions Nos 87, 98 and 135. In light of the upcoming entry into force of Act No. 20940, which will replace all of the rules governing collective bargaining, directives and a new instructional framework are being issued in order to ensure consistency with the new legislation.

The following information concerns the directives mentioned in the complaint:

**Directive No. 1489 of 26 March 2010 from the Director
of the Legal Department in the Labour Directorate**

Doctrine established in Directive No. 1489: The procedure set out in article 334bis (A) is compulsory for all collective bargaining initiated under the rules set out in the Directive. It states that ultimately, the fact that an employer may have agreed to one round of bargaining with an inter-enterprise union that resulted in a collective agreement is not sufficient; in order to renegotiate the collective agreement, the employer must again give its consent on the second, third and subsequent occasions.

Regulatory Act No. 20940 on Directive No. 1489: Article 334bis (A), currently in force, establishes the procedure for collective bargaining by inter-enterprise unions. This procedure has been completely replaced by new Chapter IV of the Labour Code, contained in article 1, paragraph 36, of the Act, which will enter into force on 1 April 2017. The paragraph states that inter-enterprise unions may bargain and conclude binding agreements on behalf of their members in large and medium-sized enterprises; it also establishes special rules applicable only to bargaining in small and micro-enterprises. The provision that recognizes the right of inter-enterprise unions and their members to bargain collectively is article 364 of new Chapter IV, which reads:

Article 364. Collective bargaining by members of an inter-enterprise union. Members of an inter-enterprise union may bargain with their employer under the collective bargaining procedure established in Chapter IV of this instrument with the modifications described in this article.

In order for an inter-enterprise union to bargain collectively, its members must be employed by enterprises in the same economic activity or category and the number of its members in the enterprise must be not less than the quorum established in article 227.

Inter-enterprise unions may negotiate as provided in article 314.

In small and micro-enterprises, bargaining with an inter-enterprise union is voluntary or optional. If the employer agrees to bargain, it must respond to the draft collective agreement within ten days of the latter's submission. If it refuses to do so, it must so state in writing within the same ten-day period.

In the event that the employer refuses to bargain with an inter-enterprise union, the latter's members may submit a draft collective agreement and begin regulated collective bargaining with the employer on the understanding that it constitutes an enterprise union for the sole purpose of such bargaining and must meet the quorum established in paragraph 2 of this article.

In medium-sized and large enterprises, members of an inter-enterprise union must bargain through that union.

During regulated collective bargaining by an inter-enterprise union, the latter's bargaining committee comprises the trade union leaders and delegates employed by the enterprise in which the bargaining is taking place.

In accordance with article 330 of the Code, both parties' advisers may participate in the bargaining.

Santiago Norte Chacabuco Inspectorate
Directive No. 1091 of 24 November 2009

Doctrine established in Directive No. 1091: It is unlawful for members of an enterprise or inter-enterprise union to participate in collective bargaining initiated by a group of workers who have come together for that purpose. This directive was issued in order to justify a prohibition not established by the Labour Code: a legally constituted union may not decide, within the scope of its powers, to participate in bargaining initiated by a group of workers, as a member thereof, after the enterprise has refused to bargain with an inter-enterprise union. The Directive establishes that if bargaining is initiated by a group of workers, other workers in the same enterprise who are members of a union may not be included in the negotiations even if the enterprise union and its members have agreed to do so.

Regulatory Act No. 20940 on Directive No. 1091: Bargaining by workers united for the sole purpose of bargaining – known as “bargaining groups” – is not regulated. A judgment of Chile’s Constitutional Court abolished the rules contained in the aforementioned draft legislation on trade union autonomy, which provided that such non-union groups could only bargain in enterprises in which there were no unions. In that connection, the doctrine upheld in Directive No. 1091 will be moot under the new labour relations system, which will, of course, still include regulations whereby unions bargain collectively on behalf of their members.

Santiago Norte Chacabuco Inspectorate
Decision No. 11 of 18 April 2011

Doctrine established in Decision No. 11: It is unlawful for an enterprise union and an inter-enterprise union to bargain jointly. This Decision was issued as a result of joint bargaining by the Industrias Ceresita SA trade union and the National Inter-enterprise Union (SME).

Regulatory Act No. 20940 on Decision No. 11: The new legislation grants inter-enterprise unions the right to bargain collectively on behalf of their members. Therefore, the doctrine based on Decision No. 11 cannot apply to situations similar to those mentioned in the complaint. The new regulations on bargaining by inter-enterprise unions and their members are described above in the comments on Directive No. 1489.

Directive No. 1607/99 of 28 May 2002 from the Labour Director

Doctrine established in Directive No. 1607/99: The directive concerns the rules governing bargaining by inter-enterprise unions, including the provisions of article 334 of the Labour Code, in force at the time of its issuance, and article 334bis (A), (B) and (C) of the Code, added through Act No. 19759.

Regulatory Act No. 20940 on Directive No. 1607/99: As with Directives Nos 1489 and 11, the doctrine established in Directive No. 1607 is a response to the legislation in force at the time of its issuance, which establishes the general procedure for collective bargaining by members of an inter-enterprise union and will cease to apply as from the entry into force of Act No. 20940. The new regulations on bargaining by inter-enterprise unions and their members are described above in the comments on Directive No. 1489.

Directive No. 0545/33 of 2 February
2004 from the Labour Director

Doctrine established in Directive No. 0545/33: The Directive establishes the procedure whereby the parties may request observations on the legality of a draft collective agreement or response thereto during collective bargaining. This procedure is designed to give the

parties certainty regarding the progress of bargaining in cases where there are legal disputes between them, precisely in order not to infringe on their rights. It is a response to the regulations currently in force, namely articles 329 and 331 of the Labour Code. In particular, article 331, paragraph 4, states: “The decision in which the observations are made shall order the relevant party to amend the clause or draft contract within five to eight days of the date on which it was notified of the decision, failing which the party shall be deemed not to have presented it or to have responded to it in a timely manner, as appropriate.”

Regulatory Act No. 20940 on Directive No. 0545/33: As stated above, the complete replacement of Chapter IV of the Labour Code has had the effect of repealing all of its provisions and replacing them with new regulations. This is particularly true of the Labour Directorate’s role in collective bargaining in the event of a legal dispute between the parties. Articles 339 and 340 of new Chapter IV do not include the penalties established in article 331, paragraph 4, of current article 331. They also provide that challenges and complaints by the parties which must be addressed by the Labour Directorate do not result in a suspension of collective bargaining.

The aforementioned articles 339 and 340 read as follows:

Chapter IV. Challenges and complaints

Article 339. Challenges concerning the membership list, quorum and other complaints. The employer may challenge the inclusion of one or more of the workers whose names appear on the list of union members covered by a draft collective agreement on the grounds of non-compliance with the provisions of this Code.

The parties may also formulate complaints regarding the draft collective agreement or the response thereto on the grounds of non-compliance with the provisions of this Chapter.

Neither party may complain that the other has violated the provisions of article 306, paragraph 4, of this Code in a draft collective agreement or response thereto, as appropriate.

Article 340. Rules of procedure. The challenges and complaints mentioned in the previous article shall be addressed by the relevant labour inspectorate according to the following rules:

(a) Employers shall formulate all of their challenges and complaints in the response to the draft collective agreement, accompanied by the background information on which they are based.

(b) The bargaining committee shall formulate all of its complaints in a single submission to the labour inspectorate, accompanied by the background information on which they are based, within five days of receipt of the employer’s response.

(c) Once the labour inspectorate has received an employer’s response containing challenges or complaints or a union’s complaints, as appropriate, it shall summon the parties to a hearing to be held within five days. The summons shall be sent to the parties’ email addresses.

(d) The parties shall attend this hearing and bring all of the necessary background information and additional documents requested by the labour inspectorate, which shall urge the parties to reach an agreement.

(e) The labour inspector shall issue a decision within five days of the date of the hearing. Challenges and complaints involving more than 1,000 workers shall be resolved by the Labour Director.

(f) The only recourse against such decisions is an appeal for reversal, which shall be filed within three days. Decisions on appeals for reversal shall be issued within three days and may be appealed before the courts within five days following the procedure set out in article 504 of this Code.

(g) Submission of a challenge or complaint shall not suspend collective bargaining.

Directive No. 4665/186 of 5 November
2003 from the Labour Director

Doctrine established in Directive No. 4665/186: The Directive establishes that employers may refuse to bargain with an inter-enterprise union, but only if they expressly state their desire not to do so within ten working days of the date on which the draft collective agreement is submitted to them.

Regulatory Act No. 20940: Collective bargaining by an inter-enterprise union is governed by new Chapter IV, article 365, the provisions of which have been reproduced and described at length in the context of Directive No. 1489. Generally speaking, employers may not refuse to bargain collectively with inter-enterprise unions in large or medium-sized enterprises.

Directive No. 3861/140 of 16 September
2003 from the Labour Director

Doctrine established in Directive No. 3861/140: The Directive interprets articles 334bis et seq. of the Labour Code on the general rules that govern bargaining, particularly with regard to the procedure, workers' prerogatives and bargaining committees.

Regulatory Act No. 20940 on Directive No. 3861/140: Collective bargaining by an inter-enterprise union is governed by the general rules and by the provisions of new Chapter IV, article 365, which have been reproduced and described at length in the context of Directive No. 1489. Generally speaking, employers may not refuse to bargain collectively with inter-enterprise unions in large or medium-sized enterprises.

Directive No. 5241/241 of 3 December
2003 from the Labour Director

Doctrine established in Directive No. 5241/241: Where members of an inter-enterprise union are compelled to initiate collective bargaining as a bargaining group because the employer, in the prescribed form and within the specified time period, has refused to bargain through the inter-enterprise union as provided in article 334bis A, currently in force, they must sign the bargaining lists.

Regulatory Act No. 20940 on Directive No. 5241/241: The new regulations on bargaining by inter-enterprise unions and their members are described above in the observations on Directive No. 1489. Submission of a list of the union's members is not an essential requirement, but it is good practice to keep the union's records updated in the event of an objection concerning the quorum or the membership list.

Directive No. 1131 of 10 March 2010 from
the Head of the Labour Relations Division

Doctrine established in Directive No. 1131: Refusal to include a union in collective bargaining.

Regulatory Act No. 20940 on Directive No. 1131: Generally speaking, the question of whether a union and all of its members may be included in bargaining initiated by another union, even where its members have consented to or authorized such a decision, must be addressed in light of the new regulations. The directives on Act No. 20940 that have been issued to date are contained in annex to these observations.

(c) Chilean law and Convention No. 103

Observation of the Government of Chile: The complaint does not state which provisions of the legislation currently in force constitute a violation of Convention No. 103 or give examples of infringement of the maternity rights established therein. The Government of Chile considers the complaint concerning Convention No. 103 to be manifestly unfounded.

(d) Legislation, national practice and Convention No. 151

Observation of the Government of Chile: The complaint does not state which provisions of the legislation currently in force constitute a violation of Convention No. 151. However, since national practice meets the freedom of association standard for public servants established in this Convention and in Convention No. 87, the Government of Chile has not violated Convention No. 151.

(e) Opinion of the Minister of Labour

At a meeting held in 2012, former Minister Evelyn Matthei is alleged to have said: “Inter-enterprise unions are a scam with only one purpose: to allow their leaders to make deals on privileges.”

Observation of the Government of Chile: The words of the Minister of Labour and Social Welfare of the previous Government, Ms Evelyn Matthei, do not represent the opinion of the current Government authorities and are completely inappropriate in describing any type of trade union.

(f) Labour reform

This reform was under way at the time of the complaint’s submission and, according to the complainants, includes pacts on special conditions for “standby” working days, overtime, bargaining quorums and other issues.

Observation of the Government of Chile: As stated in the periodic report submitted by the Government in September 2016, the labour reform (Act No. 20940) does not regulate pacts on special conditions for “standby” working days, emergency allocation of working hours or compulsory bargaining quorums for enterprise unions; these rules were set out in legislative provisions that have been repealed by presidential veto.

V. Conclusions

1. Since the restoration of democracy in 1990, the Government of Chile has been making a great effort to comprehensively reform the legislation on freedom of association, collective bargaining and the right to strike and these reforms have been incorporated into the Labour Code. During this period, Chile has also completed ratification of all of the fundamental labour Conventions and significantly improved its labour inspection system and labour courts. The rulings of both the labour inspectorate and the labour courts are clear evidence of the rule of law that has prevailed in Chile since 1990.
2. The ILO has provided extensive cooperation with the legislative reform and with the development of labour policies.
3. Particularly noteworthy is the recent labour reform under current President Michelle Bachelet culminating in the issuance of Act No. 20940, which will enter into force on 1 April 2017. The details of these advances are set out in the periodic reports on Conventions Nos 87

and 98, which were submitted to the Office in September 2016 for consultation by the respective supervisory bodies.

4. The CEACR has not yet examined the report on the Conventions mentioned in the complaint, and particularly on the most recent labour reform, which has been submitted to it. We look forward to seeing the outcome of this examination.
5. It is our understanding that the complaint submitted concerns a number of provisions that restrict the exercise of freedom of association rights that have been repealed or significantly amended by Act No. 20940. Therefore, Chile is proud to present itself to the ILO supervisory and standards implementation system as an example of progress achieved.

Accept, Sir, the assurances of my highest consideration.

Francisco Javier Díaz Verdugo
Deputy Minister for Labour
Government of Chile

c.c.: Foreign Affairs Archives
Secretariat, Ministry of Labour and Social Welfare