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TENTH ITEM ON THE AGENDA

348th Report of the Committee on Freedom of Association

Contents

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 1, 2 and 9 November 2007, under the chairmanship of Professor Paul van der Heijden.

2. The members of Argentinean, Guatemalan, Pakistani and Venezuelan nationality were not present during the examination of the cases relating to Argentina (Cases Nos 2499 and 2515), Guatemala (Cases Nos 2203, 2295, 2361, 2445 and 2540), Pakistan (Case No. 2520) and the Bolivarian Republic of Venezuela (Cases Nos 2254 and 2422), respectively.

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3. Currently, there are 142 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 36 cases on the merits, reaching definitive conclusions in 20 cases and interim conclusions in 16 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 1787 (Colombia), 2445 (Guatemala), 2450 (Djibouti), 2494 (Indonesia), 2516 (Ethiopia) and 2540 (Guatemala) because of the extreme seriousness and urgency of the matters dealt with therein.

New cases

5. The Committee adjourned until its next meeting the examination of the following cases: Nos 2566 (Islamic Republic of Iran), 2567 (Islamic Republic of Iran), 2569 (Republic of Korea), 2570 (Benin), 2574 (Colombia), 2576 (Panama), 2578 (Argentina), 2581 (Chad), 2582 (Bolivia), 2583 (Colombia), 2584 (Burundi), 2586 (Greece), 2587 (Peru), 2588 (Brazil), 2593 (Argentina), 2594 (Peru), 2595 (Colombia), 2596 (Peru), 2597 (Peru), 2598 (Togo), 2599 (Colombia), 2600 (Colombia), 2601 (Nicaragua) and 2602 (Republic of Korea), 2603 (Argentina), 2604 (Costa Rica), 2605 (Ukraine), 2606 (Argentina), 2607 (Democratic Republic of the Congo), 2608 (United States) and 2609 (Guatemala) 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

6. The Committee is still awaiting observations or information from the Governments concerned in the following cases: Nos 1865 (Republic of Korea), 2318 (Cambodia), 2323 (Islamic Republic of Iran), 2462 (Chile), 2465 (Chile), 2476 (Cameroon), 2553 (Peru), 2554 (Colombia), 2558 (Honduras), 2563 (Argentina) and 2565 (Colombia).

Observations requested from complainants

7. The Committee is still awaiting observations or information from the complainant in the following case: No. 2268 (Myanmar).

Partial information received from governments

8. In Cases Nos 2177 (Japan), 2183 (Japan), 2241 (Guatemala), 2265 (Switzerland), 2341 (Guatemala), 2362 (Colombia), 2384 (Colombia), 2470 (Brazil), 2522 (Colombia), 2528 (Philippines), 2533 (Peru), 2539 (Peru), 2543 (Estonia), 2544 (Nicaragua), 2550 (Guatemala), 2560 (Colombia), 2568 (Guatemala), 2571 (El Salvador), 2573 (Colombia) and 2589 (Indonesia), 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

9. As regards Cases Nos 2434 (Colombia), 2478 (Mexico), 2486 (Romania), 2489 (Colombia), 2493 (Colombia), 2498 (Colombia), 2513 (Argentina), 2524 (United States), 2529 (Belgium), 2532 (Peru), 2534 (Cape Verde), 2535 (Argentina), 2536 (Mexico), 2541 (Mexico), 2545 (Norway), 2546 (Philippines), 2548 (Burundi), 2549 (Argentina), 2551 (El Salvador), 2552 (Bahrain), 2555 (Chile), 2556 (Colombia), 2557 (El Salvador), 2559 (Peru), 2561 (Argentina), 2562 (Argentina), 2564 (Chile), 2572 (El Salvador), 2575 (Mauritius), 2577 (Mexico), 2579 (Bolivarian Republic of Venezuela), 2580 (Guatemala), 2585 (Indonesia), 2590 (Nicaragua), 2591 (Myanmar) and 2592 (Tunisia), the Committee has received the Governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

10. As regards Cases Nos 2392 (Chile), 2508 (Islamic Republic of Iran) and 2547 (United States), 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.

Withdrawal of complaints

Case No. 2457

11. In a communication dated 13 September 2007, the General Confederation of Labour-Force Ouvrière (CGT–FO) informs the Committee that it wishes to withdraw its complaint concerning Ordinance No. 2005-892, of 2 August 2005 (Case No. 2457) following the decision of the Council of State of 6 July 2007 cancelling the said Ordinance and thus finding in favour of the CGT-FO. *The Committee notes this information with satisfaction and decides to withdraw the complaint.*

Case No. 2531 (Argentina)

12. In a communication, dated 12 June 2007, the Trade Union Association of the Employees and the Officers of the Mendoza Judicial Authority stated that it wished to withdraw the complaint as all the matters had been resolved. *The Committee takes note of this information with satisfaction and decides to withdraw the complaint.*

Article 26 complaints

13. The Committee is awaiting the observations of the Government of Belarus in respect of its recommendations relating to the measures taken to implement the recommendations of the Commission of Inquiry.

14. As regards the article 26 complaint against the Government of the Bolivarian Republic of Venezuela, the Committee recalls its recommendation for a direct contacts mission to the country in order to obtain an objective assessment of the actual situation.

Transmission of cases to the Committee of Experts

15. The Committee draws the legislative aspects of the following case to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Greece (Case No. 2502).

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

Case No. 2153 (Algeria)

16. This case was last examined by the Committee at its March 2007 meeting and concerns allegations of obstacles to the establishment of trade union organizations and a trade union confederation and to the exercise of trade union rights, anti-union dismissals, anti-union harassment by the public authorities, and the arbitrary arrest and detention of union members [see 344th Report, paras 15–24]. On that occasion, the Committee requested the Government: (a) to provide its observations on the allegations made by the complainant organization concerning Nassereddine Chibane, Fatima Zohra Khaled, Mourad Tchiko and Mohamed Hadj Djilani; (b) to keep it informed of the outcome of the appeal to the Supreme Court dated 5 February 2006 concerning the internal dispute between the two factions of the National Autonomous Union of Public Administration Staff (SNAPAP); (c) to keep it informed of any appeals lodged and, as the case may be, of any decision reached on the matter of the seven workers dismissed from the Prefecture of Oran for having protested on the premises of the Prefecture; (d) to take the necessary steps to ensure that decisions to determine the representativeness of a particular organization can be taken without the identities of members being revealed; and (e) to take the necessary steps without delay to amend the legal provisions preventing workers' organizations (irrespective of the sector to which they belong) from forming federations and confederations of their own choosing, and to keep it informed of the measures taken in that regard [see 344th Report, paras 22–24].

17. The Government provides responses to some of the points in communications dated 2 May, 17 July and 23 August 2007. In its communication of 17 July 2007, the Government states, with regard to the recognition of the SNAPAP, that the civil protection administration has always considered the SNAPAP to be a social partner which enjoys the

admissible privileges for most representative unions (including the secondment of its members as of August 2003), proof of the goodwill of the administration in its efforts to maintain a relationship of trust based on dialogue and the exchange of views. However, despite obtaining an extension of the deadline, the SNAPAP was unable to provide the evidence regarding its representativeness as required by law. Therefore, strictly in line with the terms of the legislation in this regard, the administration was forced to cancel the secondment of the trade unionists as of the month of October 2004, given that the SNAPAP could not claim to be a representative trade union.

18. Consequently, the Government states that: (1) Mr Nassereddine Chibane (a member of the National Union of Civil Protection – the National Autonomous Union of Public Administration Staff (UNPC–SNAPAP)) convened a trade union meeting during working hours, despite the fact that he is not authorized to do this because the SNAPAP does not enjoy the prerogatives granted to representative organizations. Having committed professional misconduct, Mr Chibane was suspended from his post of civil protection agent by a disciplinary committee before the appeal body commuted this sanction to a transfer; (2) no complaint has been recorded by the security services of the Prefecture of Oran concerning Ms Fatima Zohra Khaled (President of the trade union section of the SNAPAP at the *Ecole nationale supérieure d'enseignement technique d'Oran*), who was allegedly subjected to intimidation and harassment following the national strike of 9 May 2006; (3) Mr Mourad Tchiko (Vice-President of UNPC-SNAPAP) was brought before the joint disciplinary committee for having violated the provisions of section 17bis of Executive Decree No. 91-274, of 10 August 1991, giving special status to civil protection agents. Mr Tchiko organized an unauthorized gathering while on sick leave. The disciplinary committee and the appeal body to which he turned were of the view that his actions constituted serious professional misconduct. He is the subject of a temporary measure in the form of the application of section 131 of Decree No. 85-59 of 23 March 1985 giving standard status to workers of public institutions and administrations. Mr Tchiko's situation will not be definitively resolved until the final legal ruling concerning the criminal proceedings initiated against him has been issued; (4) the hospital administration transferred Mr Mohamed Hadj Djilani (National Secretary for Information) to a senior nurse position following repeated instances of failure to carry out correctly his tasks as senior supervisor. This measure was not in any way intended as a sanction for his trade union activities. Moreover, Mr Hadj Djilani was sentenced to a month's imprisonment for slander following complaints made by the executive body of the SNAPAP (copy of ruling provided); (5) Mr Rabah Mebarki (President of the UNPC–SNAPAP) is currently the subject of proceedings regarding the organization of an unauthorized gathering in violation of section 17bis of Executive Decree No. 91-274. In line with the regulations in force, he has been temporarily suspended from duty pending a judicial ruling.

19. In its communication of 2 May 2007, in response to the recommendations of the Committee to take the necessary steps to ensure that decisions regarding the determination of representativeness of a particular organization can be taken without the identities of members being revealed, the Government states yet again that Algerian law does not require trade union organizations to present a list of members' names as proof of its representativeness. The only obligation provided for under Act No. 90-14 of 2 June 1990 is the communication to the Ministry of Labour and Social Security before 31 March of each year of the number of members and the amount of union dues. Furthermore, with regard the Committee's recommendation concerning the possibility of trade union organizations forming federations and confederations of their own choosing, irrespective of the sector to which they belong, the Government states that the issue is being examined with a view to improving the wording of the provision brought into question by a definition of the notion of federation, union or confederation (section 4 of Act No. 90-14, of 2 June 1990).

20. Lastly, in its communication of 23 August 2007, the Government states that it is ready to inform the Committee as soon as the Supreme Court has issued a ruling concerning the appeal lodged by Mr Rachid Malaoui against the judgement of the Algiers Court of Appeal of 5 February concerning the internal dispute between the two factions of the SNAPAP.

21. *The Committee notes this information. As to the internal dispute between the two factions of the SNAPAP, the Committee expresses concern at a situation which has existed since 2003 and which it has been examining for several years [see in particular 336th Report, paras 152 and 162]. The Committee hopes that the dispute will be resolved as soon as possible, in particular through a rapid decision of the Supreme Court and that the Government will send a copy of the decision as soon as it has been issued.*

22. *As to determining the representativeness of trade union organizations, the Committee recalls that this issue arose during a previous examination of the case when the complainant organization denounced the Ministry of Labour and Social Security's demand that it be provided with a list of the 430,000 members of the organization. In response, the latter argued that such a demand fitted within the context of normal relations between the authorities and legally established trade union organizations, in accordance with sections 35–37bis of Act No. 90-14 of 2 June 1990 [see 333rd Report, paras 189 and 199]. The Committee notes that in its response dated 2 May 2007, the Government reaffirms that the legal provisions in force have not to date given rise to any particular remarks on the part of the trade union organizations regularly registered. It adds that Act No. 90-14 of 2 June 1990, amended in 1991 and 1996 in order to offer more flexibility when determining representativeness, does not require the presentation of a list of names of members, that the determination of representativeness through a secret ballot (as recommended by the Committee in its previous comments) has never been opposed by the administration and that all trade union organizations are free to use this method in order to gain representativeness. The Committee recalls however that pre-established, precise and objective criteria for the determination of the representativity of workers' and employers' organizations should exist in the legislation and such a determination should not be left to the discretion of governments. The Committee has in the past been obliged to recall the risk of reprisals and anti-union discrimination inherent in demands for lists of the names of members of an organization and copies of their membership cards [see in particular 333rd Report, para. 207]. The Committee thus requests the Government to take clear and unequivocal measures rapidly regarding the competent authorities in order to ensure that in the future they do not demand in practice, in order to determine the threshold for the representativeness of trade union organizations, a list of names of members of the organization and copies of their membership cards. The Committee requests the Government to keep it informed of all measures taken in this respect.*

23. *As to the matter of the recognition of the representativeness of the SNAPAP, the Committee first of all refers to its previous comments regarding the representativeness of trade union organizations, to the effect that minority trade unions that have been denied the right to negotiate collectively should be permitted to perform their activities and at least to speak on behalf of their members and represent them in the case of an individual claim [**Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 359]. The Committee further requests the Government to take the necessary steps to determine the representativeness of the SNAPAP, should the latter make such a request, within the framework of a procedure which respects the principles listed above concerning the protection of the identity of the members of the organization. In the event that all the elements determining the representativeness of the SNAPAP are provided, the Government should recognize all those rights going hand in hand with the granting of trade union status, and in particular the right of its leaders to exercise activities involving the representation and defence of the interests of the members of the trade union organization.*

24. *As to the situation of several SNAPAP officials, the Committee deplores the disciplinary measures taken against them and recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see* ***Digest****, op. cit., para. 799]. Recalling that the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned, the Committee requests the Government to keep it informed of any rulings issued concerning Mr Rabah Mebarki and Mr Mourad Tchiko and of any measures taken by the employer in this regard.*

25. *The Committee requests the Government to keep it informed regarding the appeal pending and any decision reached on the matter of the seven workers dismissed from the Prefecture of Oran for having protested on the premises of the Prefecture.*

26. *The Committee requests the Government to keep it informed of the outcome of the review of section 4 of Act No. 90-1, of 2 June 1990, with a view to finding an improved wording for the notion of federation, union or confederation. Recalling the need to take the necessary steps without delay to amend the legal provisions preventing workers' organizations from forming federations and confederations of their own choosing, the Committee trusts that the Government will be in a position to inform it in the near future of any progress made in this regard in consultation with the social partners.*

27. *The Committee reminds the Government that the technical assistance of the Office is at its disposal as regards the matters arising in this case.*

Case No. 2302 (Argentina)

28. The Committee last examined this case at its meeting in June 2006 [see 342nd Report, paras 15–17], when it regretted that the Government had not informed it of the situation with regard to the Trade Union of "Puntanos" Judicial Employees' (SIJUPU) application for trade union status, and requested the Government to inform it of the ultimate outcome of the procedure.

29. In a communication dated 20 February 2007, the SIJUPU states that for the last three years, the trade union has suffered from discrimination, persecution and offence at the hands of the Higher Court of Justice, as demonstrated by the negotiating and signing of agreements with groups of employees who lack legal representation, and by notifying six trade union members, as well as members of the executive committee (who hold trade union immunity) of summary administrative proceedings against them. Ms María Fabiana Aquín, Mr Raúl Suárez, Ms Lía Barroso and Ms Susana Muñoz, members of the SIJUPU and the executive committee, have been notified, to their astonishment, that summary administrative proceedings riddled with irregularities have been initiated against them. Given that these proceedings are beset by errors, motions have been filed to have them ruled null and statute-barred. In addition, the application for *amparo* (protection of constitutional rights) filed by the judicial employees of the first judicial district in 2002 on the basis of the lack of safeguards and equal opportunities (they were not eligible for promotion) is before the Higher Court of Justice. As part of this application, two extrajudicial agreements were reached with this body, in July 2005 and April 2006, which could not be approved since they were not submitted to the Higher Court of Justice.

30. The SIJUPU adds that the *amparo* application filed by the SIJUPU General Secretary, Mr Juan Manuel González, in 2004 (for having been dismissed while holding trade union immunity) is an additional measure, accepted by the employer with finality, but no definitive decision has been reached as to the substance, in spite of various requests made during the proceedings. A request for reconsideration made in 2004 has yet to be heard. The SIJUPU maintains that very little has changed since the initial submission, given that the trade union continues to do its utmost to protect its members' rights, while the employer does not promote freedom of association and is a long way from complying with decisions handed down by national and international bodies in the interests of maintaining an ideal relationship with an organization which, in this case, is exercising the will of most judicial employees in the province by seeking to improve its members' quality of life. It stresses that it has achieved trade union status following a hard-fought battle lasting more than three years, during which it has had to overcome all manner of legal, administrative and bureaucratic obstacles, and that common sense should prevail when initiating effective and adult dialogue.

31. In a communication dated 16 August 2007, the Government states that in July 2005, new judges were appointed to the Higher Court of Justice of San Luis Province. These appointments were the result of a significant social and political agreement, inasmuch as they marked the beginning of a process involving popular participation through a system of public hearings, similar to that adopted by the State for nominating judges to the Supreme Court. The principal issues to be heard by the Court included the trade union representation of the judicial employees, since two groups were vying for such status, posing various difficulties. This situation began to change after the Ministry of Labour granted the SIJUPU trade union status in its decision No. 783.

32. Direct action was taken by staff belonging to both trade unions during the first year of the new Higher Court, up until the SIJUPU was recognized as a trade union. Legal proceedings were also brought in an attempt to obtain advantages or recognition by submitting all manner of complaints. These included an application for *amparo* with protective measures against the Higher Court itself (*Judicial employees* v. *Higher Court of Justice (amparo)*). In fact, this judicial measure brought the administrative career of the employees involved to a standstill. Records of the proceedings show that over 50 judges took cognizance of the case, as a result of numerous recusals after they considered that they were, for various reasons, involved or implicated in the case that led to the application for *amparo* being submitted. In these circumstances, an agreement was reached with the complainants whereby they were permitted to participate in staff competitions and, subsequently, to be promoted, which has since been made effective. This means that the substance of the issue and of the original complaint has been resolved.

33. The Government also states that at the same time as the agreement was taking shape, the Committee of the Trade Union of Judicial Employees was meeting with the Higher Court to discuss overhauling labour conditions, the Statutes concerning judicial employees and conditions for dismissal, reaching significant agreements. The Government states that, to date, there have been no new confrontations since the new judges were appointed, while also recognizing that there are other matters that have yet to be resolved, such as those subject to judicial or administrative procedures, the resolution of which falls under the remit of those who are specifically and exclusively competent in such matters, which are not matters for the Higher Court.

34. *The Committee notes with interest the information supplied by the Government, and in particular that: (1) it was decided to grant the SIJUPU the trade union status that it had requested some years ago; (2) an agreement was reached with the employees who had filed applications for amparo, whereby they were permitted to participate in staff competitions, and, subsequently, to be promoted; (3) significant agreements have been*

reached between the trade union and the Court authorities; and (4) since the new judges were appointed to the Higher Court, there have been no new confrontations, but there are also other matters that have yet to be resolved, such as those subject to judicial or administrative procedures. In these circumstances, the Committee hopes that the judicial and/or administrative proceedings will reach a conclusion in the near future and that the dialogue between the parties initiated, according to the Government, following the appointment of the new Higher Court authorities, will continue to be consolidated.

Case No. 2326 (Australia)

35. The Committee last examined this case at its November 2006 meeting [342nd Report, paras 21–24]. On that occasion, the Committee requested the Government to initiate further consultations with the representative employers' and workers' organizations concerned in the building and construction industry in order to explore their views on all of the matters raised in the Committee's recommendations so as to ensure that the Building and Construction Industry Improvement Act 2005 (BCII Act), is in full conformity with Conventions Nos 87 and 98. The Committee also referred the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.

36. In a communication dated 14 September 2007, the complainant Australian Council of Trade Unions (ACTU) sent additional information on the alleged harsh measures contained in the BCII Act against construction workers and their unions in continuing deterioration of compliance with Conventions Nos 87 and 98.

37. In its communication dated 18 April 2007, the Government indicates that consultations took place with representative employers' and workers' organizations on 12 December 2006. The consultations comprised representatives from the ACTU, which is the complainant in this case, the Construction, Forestry, Mining and Energy Union, the Australian Chamber of Commerce and Industry (ACCI) and the Master Builders' Association (MBA). The Government forwarded a copy of the minutes of the consultations.

38. In a communication dated 13 July 2007, the Government provides an analysis of the national conditions which led to the adoption of the BCII Act. These conditions include a series of legislative reforms aimed at generating a shift toward workplace bargaining (adoption of the Workplace Relations Act in 1996 and the Work Choices Act in 2006), the fact that the building and construction industry is a major one in terms of employment and contribution to Australia's national output (reason for which industrial action in that industry has been seen as liable to cause more harm to more people than similar action in other industries), and finally, the findings in 2003 of a Royal Commission into the building and construction industry which depicted a culture of lawlessness in the building and construction industry. The Government also provides an overview of the examination of the case by the Committee in which it indicates that the recommendations made at its November 2005 meeting were interim and non-binding.

39. The Government indicates with regard to the Committee's recommendation of consultations with the social partners, that in addition to the consultations which took place on 12 December 2006, the Australian Government encourages all building industry participants to share their views, on an ongoing basis, about issues affecting the industry. For instance, the Australian Building and Construction Commissioner conducts an industry forum every six months which is designed to encourage discussion between building industry participants. The National Workplace Relations Consultative Council also provides a regular and organized means by which senior representatives of the Australian Government consult with employers' and workers' organizations on workplace relations

and labour market matters of national concern. The ACTU, ACCI and MBA all have representative members on this Council.

40. The Government finally refers to the ACTU submission of October 2006, which had been addressed by ACTU to the Committee of Experts on the Application of Conventions and Recommendations with regard to the conformity of the BCII Act to Conventions Nos 87 and 98, and in which the Government largely maintains its previous position on this matter. Finally, in a communication dated 1 November 2007, the Government states that it is in caretaker mode pending general elections on 24 November and is therefore unable to respond to the most recent submission of the ACTU. The Government assures that it will bring the submission to the attention of the incoming government for reply.

41. *The Committee takes due note of the minutes of the consultations held in December 2006 between the Government and the social partners with regard to the Committee's recommendations on this case and requests the Government to provide its observations on the additional information provided by ACTU in its communication dated 14 September 2007. Noting from the minutes and the Government's communication on the legislative aspects of this case that, in respect of the matters raised by the Committee in the previous examination of this case, the parties appeared to maintain divergent positions, the Committee requests the Government to continue to initiate further consultations with the representative employers' and workers' organizations in the building and construction industry with a view to building a common understanding over ways to ensure that the BCII Act is brought into full conformity with Conventions Nos 87 and 98 and to keep the Committee informed in this respect.*

42. *The Committee would like to emphasize in this regard that contrary to the Government's impression that the Committee's recommendations, reached at its November 2005 meeting, were interim and therefore non-binding, the Committee reached final conclusions and recommendations which are to be implemented fully and promptly following consultations with the social partners with the same due consideration the Government accords to all the obligations it has freely undertaken by virtue of its membership in the Organization [see 346th Report, para. 79].*

Case No. 2433 (Bahrain)

43. The Committee last examined this case, which concerns legislation prohibiting government employees from establishing trade unions of their own choosing, at its November 2006 meeting. On that occasion, the Committee noted with interest that the draft amendment to article 10 of the Trade Union Act grants public workers and employees the right to establish trade unions of their own choosing, and also allows workers in both the public and private sectors to establish more than one union per enterprise. Further noting the Government's indication that the draft amendment was currently before Parliament, the Committee reiterated its expectation that the said amendment would be adopted and promulgated in the very near future, and also requested the Government to keep it informed of developments in this respect [see 343rd Report, paras 19–21].

44. In a communication of 22 March 2007, the General Federation of Bahrain Trade Unions (GFBTU) states that the Government has not fulfilled its obligation to amend article 10 of the Trade Union Act but, to the contrary, replied to a request by the Parliament for a proposed legislative amendment on the matter in the following manner:

– "Though the Government wishes to uphold trade union action, it nevertheless is also committed to ensuring the proper uninterrupted operation of public utilities. These services are provided for benefit of the public. Consequently, the Government deems that public interest requires a study of the impact of approval of the draft legislation

on the proper operation of these utilities, especially in light of the terms of article 21 of the Trade Union Act, which allows trade union members to trade strike action and declare a work stoppage without the approval of their authorities. The Government also needs to assess whether the strike could lead to any excesses and or affect the smooth and organized operation of public services. Needless to say, the public, which attaches great importance to public utilities and their continued organized operation would suffer great hardship should such services be paralysed or cease to operate and provide their vital services. From the above it is clear that, to approve this amendment at present would harm the operation of public services, especially as in the Kingdom of Bahrain, the experience of civil service workers in trade union creation, or membership thereof, is in its infancy and taking its first steps. More time is required for them to firmly establish themselves in society, before government workers can be given the right to set up their own trade unions. It should also be noted that authorizing government workers to set up their own trade unions has given rise, in certain Arab countries, to many obstacles which could affect the proper operation of public services in them. On the basis of the above, the Government finds that the proposed amendment should be postponed until sufficient time has elapsed to confirm the success of the trade union experience, as well as to take account of the principle of gradual legislative application" (extract from memorandum on the draft legislation amending certain provisions of the Trade Union Act issued by Legislative Decree No. 33 of 2002).

– Draft Law No. 19 further restricts trade union rights and does not amend article 10 of the Trade Union Act so as to allow workers in the public sector to establish trade unions.

45. The GFBTU further states that the Civil Service Administration had issued Directive No. 3 of 2007, concerning organizations established by groups of civil servants. Directive No. 3, which is attached to the complainant's communication, makes reference to the efforts of certain groups of civil servants to establish trade unions, issue statements to the media and submit a petition on wages to the authorities. It further states that organizations of civil servants are illegal under article 10 of the Trade Union Act as such servants are only allowed to join trade unions set up by other categories of workers. It indicates that the authorities may, under Chapter 11 of the Civil Service Law, take disciplinary action against staff that have set up or joined such illegal organizations.

46. The complainant states that the Government has pursued a policy of harassment against members of public sector trade unions alleging, in particular, that the Government had questioned Ms Najjeyah Abdel Ghaffar, the deputy head of the postal workers' union, over statements to the press she had made concerning the hardships faced by postal workers; Ms Najjeyah Abdel Ghaffar was subsequently suspended for three days without pay. Mr Jamal Ateek, the head of the postal workers' union, was also questioned on 18 March 2007. Attached to the complainant's communication are several communications addressed to Ms Najjeyah Abdel Ghaffar from the postal authorities, including a communication of 18 January 2007 notifying her that the disciplinary action of suspension without pay for three days was being imposed for having issued statements to the press, in violation of civil service regulations and circulars. The communication states in particular that Ms Najjeyah Abdel Ghaffar was in breach of civil service Circular No. 1, 2007, regarding the right of workers governed by civil service regulations to join trade unions, as she had spoken to the media in her capacity as Deputy President of the unauthorized Bahrain Post Trade Union.

47. The Government transmits a copy of Law No. 49 of 2006, amending certain provisions of the Trade Union Act by a letter dated 10 April 2007. In its communication of 15 June 2007, the Government indicates that the issue of public sector organizations was being

studied by the National Council and that no action could be taken until the legislative authorities had studied and taken a decision regarding this matter.

48. *The Committee notes with regret the Government's indication that the establishment of public sector organizations was being considered anew by the legislative authorities – despite its previous indications that a draft amendment to article 10 of the Trade Union Act, which allowed public sector workers to establish trade unions of their own choosing, had been submitted to Parliament in 2006. The Committee duly notes the concerns raised in the Government's memorandum to Parliament relating to the possibility of strike action in the civil service and would draw the Government's attention to the following principles whereby certain restrictions may be placed on the civil service in this regard. The right to strike may be restricted or prohibited (1) in the public service only for public servants exercising authority in the name of the State or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). A minimum service could be appropriate as a possible alternative in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruption [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 576 and 607]. Coming back to its original recommendation in this case concerning the right to organize of civil servants, however, the Committee must once again stress that all public service employees (with the exception of the armed forces and police) should be able to establish organizations of their own choosing to further and defend their interests. The Committee must therefore once again strongly urge the Government to take the necessary measures, without delay, to amend article 10 of the Trade Union Act in accordance with this principle and recalls that the technical assistance of the Office is available in this regard.*

49. *As regards the disciplinary action taken against Ms Najjeyah Abdel Ghaffar, the Committee considers that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see* ***Digest****, op. cit., para. 799]. The Committee requests the Government to take the appropriate steps to compensate Ms Najjeyah Abdel Ghaffar for the period of suspension without pay imposed upon her, and to ensure that no further disciplinary action is taken against members of public sector trade unions for activities undertaken on behalf of their organizations, pending the amendment to article 10 of the Trade Union Act.*

Case No. 2430 (Canada)

50. The Committee last examined this case at its meeting in November 2006 [see 343rd Report, paras 339–363]. On that occasion the Committee requested the Government to rapidly take legislative measures, in consultation with the social partners, to ensure that academic and part-time support staff in colleges of applied arts and technology in Ontario fully enjoy the rights to organize and to bargain collectively, as any other workers.

51. The Committee notes the communication of the Government dated 26 April 2007, according to which the Minister and Deputy Minister of the Government of Ontario have met with representatives of the Ontario Public Service Employees Union (OPSEU) and the Organization of Part-Time and Sessional Employees of Colleges and Applied Arts and Technology (OPSECAAT) and are reviewing the issues raised by both parties.

52. *The Committee trusts that, during the review of issues between the Minister and the relevant social partners, the question of ensuring that academic and part-time support staff in colleges of applied arts and technology in Ontario fully enjoy the rights to organize and to bargain collectively will be fully examined and requests the Government to keep it informed of any legislative measures taken in this respect.*

Case No. 2046 (Colombia)

53. The Committee last examined this case at its March 2007 meeting [see 344th Report, paras 41–45]. On that occasion, the Committee made the following recommendations on the matters that remained pending.

54. The Committee requested the Government to keep it informed of the final outcome of the pending appeals of Mr Rodas against the legal action taken by Cervecería Unión SA to suspend his trade union immunity. The Committee notes the Government's information that the High Court of Medellín (Labour Division) has still not handed down a ruling. *The Committee recalls that justice delayed is justice denied, and hopes that the judicial authority will hand down a ruling in the near future. The Committee requests the Government to keep it informed in this regard.*

55. As regards the closure of the COLENVASES plant, which led to the dismissal of 42 workers and seven union officials in violation of their trade union immunity and of the labour ministry ruling that authorized the closure but only after implementing clauses 14 and 51 of the collective agreement, the Committee notes the Government's information that the case currently before the administrative disputes courts has not yet been resolved, and that, of the seven union officials who had initiated judicial proceedings before the Council of State, four withdrew between September 2003 and May 2006. The Committee also notes that the Government sent a copy of the ruling of the council of State. In this regard, the Committee observes that it emerges from the text that the Council of State considered that the question of the dismissal of the trade union leaders officials without lifting their trade union immunity should be examined by the labour courts and that the Council of State did not pronounce itself on the violation of clauses 14 and 51 of the collective agreement in force at the time of the closure. *In these circumstances, the Committee requests the complainant organization to indicate whether legal suits have been filed before the labour courts to obtain reintegration and the implementation of the collective agreement clauses.*

56. As regards the allegations concerning the closure of a number of plants of BAVARIA SA, which resulted in a drastic decline in the number of union members, in relation to which, according to the Government, the Territorial Directorate of Cundinamarca, Inspectorate 10, had launched an administrative inquiry into the matters raised in the complaint, the Committee notes that the Directorate in question has been asked to keep it informed. *The Committee requests the Government to take the necessary measures to ensure that the inquiry produces concrete results in the near future and to keep it informed in that regard.*

57. The Committee takes note of the communication from the Trade Union of Workers of the National Coffee Growers' Federation of Colombia dated 26 June 2007, alleging that ordinary check-off of union dues is still not being carried out for workers despite the fact that they are covered by the collective agreement. *The Committee notes that this matter has*

been examined on a number of previous occasions [see the 327th, 338th and 342nd Reports], and, as it did on those occasions, requests the Government to take the necessary measures to ensure that ordinary union dues are collected without delay from non-union workers employed by the National Federation of Coffee Growers of Colombia who benefit from the collective agreement, on behalf of SINTRAFEC. The Committee requests the Government to keep it informed in this regard.

Case No. 2068 (Colombia)

58. The Committee last examined this case at its meeting in March 2007 [see 344th Report, paras 46 to 50]. On that occasion, the Committee requested the Government to: (a) send a copy of the pending court case relating to the dismissal of union leaders of Employees' Association of the National Penitentiary and Prison Institute (ASEINPEC) and to take the necessary measures to guarantee the safety of the trade union leaders who are under threat, to undertake the appropriate investigations to identify and punish those responsible and to keep it informed on this matter; (b) to take the necessary measures for the reinstatement without delay of the 57 dismissed workers from the municipality of Puerto Berrío without loss of wages and, if reinstatement is not possible in view of the time that has elapsed, for their full compensation; and (c) send its observations regarding the allegations presented by the Regional Federation of Workers in the Eastern Andean Area of Colombia (FETRANDES) referring to the dismissal of a member of the executive board, Mr Jorge Eliécer Miranda Téllez, in the context of the restructuring of the Bogotá Traffic and Transport Department, without the suspension of trade union immunity.

59. In its communication dated 8 March 2007, ASEINPEC states that the trade union leaders (Mr Buyucue Penagos, Mr Amaya Patiño, Mr Gutiérrez Rojas, Mr Nieto Rengifo) and the members (Mr Gutiérrez Santos, Mr Serna Rengifo and Mr Pérez Santander) who were dismissed have still not been reinstated. According to the trade union, the National Penitentiary and Prison Institute (INPEC) has not provided proof of a request to suspend the trade union immunity of the aforementioned trade union leaders. The Committee takes note of the Government's communication dated 4 July 2007 in which it refers to a communication from INPEC informing that the complaints filed by Mr Buyucue Penagos, Mr Gutiérrez Santos, Mr Nieto Rengifo, Mr Serna Rengifo and Mr Pérez Santander are still being processed, which is why they have not been reinstated. The Committee recalls that the dismissal of these trade union leaders dates back to 1999, that they were dismissed simply because of their participation in a one-day action in support of prison security and that their trade union immunity was not suspended. The Committee further recalls that justice delayed is justice denied. *In these circumstances, the Committee requests the Government to do everything in its power to ensure that the proceedings are concluded in the near future and to keep it informed in particular with regard to the status of the trial of Mr Amaya Patiño, to whom it did not refer in its reply.*

60. With regard to the dismissal of the workers from the municipality of Puerto Berrío, the Committee notes that, according to the Union of Puerto Berrío Municipal Workers, none of the workers has been reinstated despite the fact that every one of them has filed a complaint with the mayor of the municipality. According to the trade union, the municipality has let it be known that until there is a judicial ruling from the Colombian justice system ordering the reinstatement, the municipality will not take any action.

61. The organization points out that in the previous examination of the case when the reinstatement of the 57 dismissed workers of the Puerto Berrío trade union was recommended, no mention was made of the 32 workers of the Association of Employees of Puerto Berrío who had also presented allegations in the first examination of this case and who were dismissed on the same occasion [see 325th Report, para. 285].

62. The Committee notes that in its communication dated 4 July 2007, the Government states that in order for it to compensate the workers they need to take legal action to request compensation. In this respect, the Committee recalls that in its previous examination of the case it had requested the reinstatement of the dismissed workers because they had been dismissed on anti-union grounds. Only if reinstatement is not possible may the full compensation of the dismissed workers be arranged. *In these circumstances, taking into account the Government's reply that the workers themselves need to initiate legal action for their reinstatement, the Committee invites the dismissed workers of the Union of Puerto Berrío Municipal Workers and of the Association of Employees of Puerto Berrío to request their reinstatement before the judicial authorities and requests the Government to do everything in its power to ensure that these proceedings are concluded rapidly.*

63. With regard to the allegations presented by FETRANDES, regarding the dismissal of a member of the executive board, Mr Jorge Eliécer Miranda Téllez, in the context of the restructuring of the Bogotá Traffic and Transport Department, without the suspension of trade union immunity, the Committee notes that the Government states that the city council of Bogotá has still not sent any information in this regard. *The Committee requests the Government to carry out an investigation to determine whether Mr Miranda Téllez was indeed dismissed without the suspension of trade union immunity required by law and, if this is the case, to ensure that he is reinstated without delay. The Committee requests the Government to keep it informed in this respect.*

Case No. 2097 (Colombia)

64. The Committee last examined this case in March 2006 [see 340th Report of the Committee, paras 66–68]. The Committee notes the communications from the Trade Union of Workers of "Manufacturas Colombianas Popayán SA" (SINTRAMANCOL), dated 20 March 2007, and from the Antioquia branch of the General Confederation of Labour (CGT), dated 3 May 2007. The Committee also notes the communications from the Government, dated 11 July and 1 October 2007, which refer to issues that have already been examined.

65. With regard to the allegations made by SINTRAMANCOL, the Committee recalls that these concern the dismissal in 2000 of 12 trade union officials from the enterprise Mancol Popayán SA without authorization by the judicial authorities, which had led the Territorial Directorate of Cauca to sanction the enterprise by imposing a fine of 35 legal minimum wages (equivalent to 10,010,000 Colombian pesos), as the dismissals in question were in violation of the provisions of national legislation. For its part, the Committee had requested the Government [see 329th Report of the Committee] to take measures to facilitate the reinstatement of the dismissed trade union officials and, upon confirmation that the enterprise no longer existed, as the complainant organization had claimed, to ensure that the persons concerned were fully compensated. In this respect, the Committee notes that the trade union organization alleges in its last communication that, despite the time that has elapsed (7 years and 11 months), the legal proceedings brought before the judicial authority have not been concluded. Furthermore, in September 2005, the judicial authority annulled all proceedings since 2001, which caused further delays, without the dismissed workers having been compensated. The Committee notes the information according to which the Government would request information from the third labour tribunal of the district of Popayán. *In this regard, the Committee stresses the importance of bringing proceedings to a rapid conclusion and urges the Government to make every effort to ensure that the judicial authority takes a decision without delay.*

66. With regard to the allegations made by CGT-Antioquia, the Committee recalls that these concern the dismissal on 25 May 1995 of Mr Hector de Jesús Gómez, former trade union official and member of the Trade Union of Workers of "Cementos del Nare SA"

(SINTRACENARE). The Committee recalls that, in the context of this dismissal and in accordance with clause 13 of the collective agreement, the trade union organization requested the enterprise to set up a dismissals committee, which was established on 18 August 1995 and which declared the dismissal of Mr Gómez to be unjust and ordered his reinstatement, together with the payment of the wages and benefits owed to him [see 329th Report, para. 454]. The Committee notes that clause 13 of the collective agreement gave the employer an opportunity to insist on dismissal, but with payment of the compensation due plus an additional 12 per cent. The Committee notes that, in its last communication, the CGT indicates that, despite the time elapsed, the enterprise Cementos del Nare SA has not fully compensated Mr Gómez as required under clause 13 of the collective agreement. *The Committee regrets that despite the time which has elapsed, the Cementos del Nare SA enterprise has not fully compensated Mr Gómez as required under clause 13 of the collective agreement and requests the Government to take the necessary measures to ensure that this payment is made without delay.*

Case No. 2151 (Colombia)

67. The Committee lasted examined this case at its meeting in March 2007 [see 344th Report of the Committee, paras 51–56]. On that occasion, the Committee made the following recommendations on the matters that were still pending, to which the Government replied in communications of 9 April, 4, 9 and 25 July 2007; the Government also refers to other matters which have already been examined.

68. The Committee asked the Government to provide information on the outcome of the proceedings pending before the Council of State concerning the legality of Decree No. 1919, which suspended certain advantages in respect of wages and benefits that were provided for in collective agreements. The Committee notes the copy of the ruling of 19 May 2005 handed down by the Council of State in which it declares the decree to be legal. According to the ruling, the situation was governed by other decrees (Nos 1133 and 1808 of 1994), provisions of equal standing to that in question. Furthermore, Decree No. 1919 respected the acquired rights of public employees, who failed to demonstrate, according to the ruling of the Council of State, how it worsened their situation. On the contrary, according to the judicial authority, the decree had a beneficial effect. *The Committee notes this information.*

69. With regard to the dismissal of Jorge Eliécer Carrillo Espinosa, President of the Union of Workers of the Social Welfare Fund of Cundinamarca (SINDECAPRECUNDI), the Committee noted the Government's communication stating that in line with the ruling of 20 November 1998 by the Administrative Court of Cundinamarca "the established procedure for the dismissal of a public employee was fully observed, so it cannot be claimed that any rules or regulations were violated or ignored; however, it should be emphasized that, whilst the rules set out in the Substantive Labour Code do not apply to public employees, and there being no requirement to seek the jurisdictional authority's permission for the separation of the complainant, the appropriate administrative decision should have been issued, giving the reasons why he could not be kept on". Further on, the ruling states that the separation was due to the decree dismissing the staff of the Social Welfare Fund of Cundinamarca. The Committee notes the new communication of the Workers' Confederation of Colombia (CTC) in which it states that the entity Convida replacing the Social Welfare Fund refuses to reinstate Mr Jorge Eliécer Carrillo Espinosa. The Committee also notes the information provided by the Government to the effect that at the time of the dismissal it was not considered necessary to waiver trade union immunity when dealing with public employees given that the Labour Code, and consequently section 405 of that code, did not apply to them. This decision was corroborated by the Administrative Court of Cundinamarca and the Council of State. Subsequently Act No. 362 of 1997 was issued, stating that in order for a public employee to be dismissed

his/her trade union immunity must first be waived. However, such legislation cannot be applied retroactively. *The Committee notes this information.*

70. With regard to the dismissal of members of the executive board of the Union of Official Workers of Cundinamarca (SINTRACUNDI) without waiver of their trade union immunity, the Government indicates that the workers were not dismissed unilaterally; rather, the employment relationship was terminated by mutual agreement, in accordance with the provisions of article 47(D) of Decree No. 2127 of 1945, the corresponding conciliation report having been duly signed. However, the Committee notes the communication of the General Labour Confederation (CGT) of 5 June 2007 in which it alleges that section 3 of Ordinance No. 01 of 1996 providing for voluntary retirement was declared null and void by the Administrative Tribunal in February 2000, a ruling upheld by the Council of State on 4 April 2002. The complainant organization alleges that in light of this judicial ruling the conciliation report signed by the workers affiliated to SINTRACUNDI is null and void. *The Committee notes this information. The Committee notes, however, that an examination of the documents transmitted by the Government shows that the Constitutional Court issued a ruling in this regard in ruling T809 of 2005 in which it examined the restructuring process, as did the Labour Appeal Chamber of the Supreme Court of Justice, which, like the Constitutional Court, was of the opinion that the conciliation process was valid, in light of the fact that consent was freely given. The Committee notes this information.*

71. As to the allegations presented by the CGT concerning the Tolima Department (involving restructuring and collective dismissals and covered in a previous examination of this case) [see 330th Report of the Committee], according to which the immunity of the trade union leaders was not waived and complaints lodged with the judicial authorities have not achieved their reinstatement, the Committee notes that the Government states that this was a case of voluntary retirement established under Conventional Agreement No. 1 signed between the Governor and the negotiating committee of the Union of Workers of Tolima (SINTRATOLIMA) and that as a consequence the contracts of the unionized workers were terminated as the result of a mutual agreement. The Government sends a copy of the agreement.

72. In its communication of 6 October 2006 (effectively received on 18 June 2007), the National Union of Public Servants of the State of Colombia (SINTRAESTATALES) alleges that following the constitution of the trade union organization in 1996, the Governor of Cundinamarca Department proceeded to dismiss the members of the national executive board (Luz Mary Cediel Contreras, Héctor de Jesús Ordóñez Caicedo, Myriam Yolanda Rojas Mafla), the executive board of Cundinamarca (Fabio Hernando Pastor Pastor, Edgar Tarazona, Luz Dary Ramirez Forero, Carlos Vargas Rincón, Edgar Orlando Mora Alvarez, Carlos Enrique Barrera Cubillos, Yolanda Rojas) and members of the claims committee (María Gloria Castiblanco Hurtado and Benicio Sánchez Peñaloza). These workers initiated legal actions with varying outcomes. In the case of Héctor de Jesús Ordoñez Caicedo, Edgar Orlando Mora Alvarez and Carlos Enrique Barrera Cubillos, the decisions were favourable, while the other trade union leaders were refused reinstatement. The Committee regrets that the Government has not sent its observations in this regard. However, it should be pointed out that more than 11 years have passed and that during that time a process of restructuring was carried out within the public entity which was examined by the Committee on a previous occasion [see 338th Report, paras 126 and ff]. Under these conditions, the Committee is of the opinion that, although the complaints examination procedure contains no formal rules determining a particular period concerning prescription, a Government may find it difficult, if not impossible, to respond in detail to allegations concerning events which occurred a long time ago, in particular taking into consideration the restructuring process which took place in the interim. *Under these conditions, the Committee will not pursue its examination of this allegation.*

Case No. 2237 (Colombia)

73. The Committee last examined this case at its November 2006 meeting [see 343rd Report, paras 56–58]. On that occasion, the Committee requested the Government: (a) to send a copy of the certificate signed by the company's auditor confirming that the wage increase of 7.49 per cent awarded by RIOTEX SA was for all the company's workers, as well as a copy of the communication signed by the Coordinator of the Prevention, Inspection, Monitoring and Control Group of Antioquia Territorial Directorate certifying that no complaint had been filed by workers against the enterprise; and (b) to send its observations concerning the disparity in wages paid to different workers at the Hilazas Vanylon SA enterprise and any legislative measures adopted with regard to the conclusion of service contracts with workers' cooperatives in several enterprises, thereby obstructing freedom of association, the right to present lists of demands and the right to strike.

74. The Committee takes note of the Government's communication dated 21 March 2007 with which it also sends a copy of the certificate of the RIOTEX auditor confirming that the company awarded a wage increase of 7.49 per cent to both the unionized workers and those who were not union members, with effect from 16 July 2003. The Committee also takes note of the copy of the certificate from the Coordinator of the Prevention, Inspection, Monitoring and Control Group of Antioquia Territorial Directorate confirming that there is no pending inquiry into the company.

75. As regards the disparity in wages paid to different workers at the Hilazas Vanylon SA enterprise, the Committee notes the Government's information that the Atlántico Territorial Directorate issued resolution No. 001575 of 12 December 2006 which leaves it to the parties concerned to apply to the ordinary labour authority. As regards legislative measures concerning service contracts with workers' cooperatives in different undertakings, obstructing freedom of association, the right to present lists of demands and the right to strike, the Government states that members of cooperatives do not have the right to join trade unions, and that the Government is not obliged to apply the Promotion of Cooperatives Recommendation, 2002 (No. 193), because it is not binding. The Committee notes also that according to the Government, workers in cooperatives enjoy freedom of association and collective bargaining as long as they comply with the relevant conditions.

76. *The Committee takes note of this information. The Committee recalls as it has underlined on several occasions that, although cooperatives represent one particular way of organizing production methods, it cannot cease consideration of the special situation of workers with regard to cooperatives, in particular as concerns the protection of their labour interests and considers that such workers should enjoy the right to join or form trade unions in order to defend those interests [see 336th Report, Case No. 2239, para. 353, and 337th Report, Case No. 2362, para. 757]. The Committee requests the Government to ensure that cooperatives are not used as a means of preventing workers from exercising trade union rights, in particular by publicizing among both members and workers of cooperatives the rights and obligations of both.*

Case No. 2297 (Colombia)

77. The Committee last examined this case at its meeting in November 2006 [see 343rd Report, paras 62 and 63]. On that occasion, the Committee took note of the Government's reply stating that no legal action had been taken for anti-union discrimination during the process of restructuring at the General Directorate of Taxation Support of the Ministry of Finance and Public Credit. The Committee takes note of the communication dated 11 June 2007 from the Antioquia branch of the Single Confederation of Workers (CUT), stating that no legal action had been initiated by the workers because it

was the employer's responsibility to request the suspension of the trade union immunity of the trade union officials who were dismissed.

78. In this regard, the Committee regrets that the Government has not sent its observations. The Committee recalls that, when it examined the case previously, it took note of the Government's information specifying that during the process of restructuring at the General Directorate of Taxation Support of the Ministry of Finance and Public Credit, approved by Decree No. 1660 of 1991 (article 7) and Resolution No. 00101 of 1992, workers could take voluntary retirement in accordance with the prescribed legal labour regulations in force and at no time were the workers' rights as trade union members violated. The Committee recalls that the Government subsequently informed it that the workers had not initiated any legal action for anti-union discrimination. *In these circumstances, the Committee requests the Government to carry out an investigation in order to determine whether the trade union officials retired voluntarily or whether they were dismissed without their trade union immunity being taken into account. If the latter is the case, the Committee requests the Government to take measures to ensure that they are reinstated on the payroll without delay and paid the wages that are owed to them. The Committee requests the Government to keep it informed on this matter.*

Case No. 2227 (United States)

79. The Committee last examined this case – which concerns the effects that the inadequacy of the remedial measures left to the NLRB in cases of illegal dismissals of undocumented workers, as a result of the decision of the Supreme Court in the case of *Hoffman Plastic Compounds* v. *National Labor Relations Board* – at its November 2006 meeting (340th Report, paras 90–97). On that occasion, the Committee recalled its previous recommendation for measures to explore possible solutions, in full consultation with the social partners concerned, to redress the inadequacy of remedial measures left to the NLRB in cases of illegal dismissals of undocumented workers and regretted that the Government merely referred to general avenues available to workers' and employers' organizations to participate in the administrative process of creating rules and regulations and for submitting legislative proposals and requests. The Committee requested to be kept informed of measures taken or envisaged to address this inadequacy. The Committee also requested information on whether the judgement in *Majlinger* v. *Cassino Contracting Corp*., 802 N.Y.S.2d 56 (App. Div. 2005) had been appealed and if so, to keep it informed of the final judgement in this matter.

80. In a communication dated 10 April 2007, the Government indicates that US case law and practice has continued to support the US position that the *Hoffman* decision does not restrict freedom of association. There is still not a single case that indicates that the rights of workers to form or join a union have been adversely affected by the decision. Federal agencies, including the NLRB and the US Department of Labor (DOL), continue to vigorously enforce labour laws without regard to a workers' immigration status.

81. In response to the Committee's specific request for information on the *Majlinger* case, the US Government reports that the decision was appealed to the Court of Appeals of New York, the highest court in the State. In a decision that consolidated two cases addressing whether an undocumented alien injured at a work site as a result of state labour law violations is precluded from recovering lost wages due to immigration status, the Court of Appeals affirmed that neither *Hoffman* nor the Immigration Reform and Control Act (IRCA) prevented undocumented workers from recovering lost wages under state law. See *Balbuena* v. *IDR Realty, LLC*, 6 N.Y.3d 338 (2006). In that same case, the Court of Appeals reversed the ruling in *Balbuena* v. *IDR Realty LLC*, 787 N.Y.S.2d 35 (App. Div. 2004), which had dismissed an employee's claim for lost earnings based on wages the plaintiff might have earned in the United States.

82. The *Balbuena* decision makes clear that *Hoffman* does not preclude an undocumented alien from recovering lost wages under New York state law. State courts in Virginia and California, the only state courts outside of New York that have published decisions that have considered *Hoffman* since the United States submitted its report in September 2005, have also refused to extend the decision beyond its intended scope.

83. In the most recent federal court consideration of *Hoffman*, the US Court of Appeals, Second Circuit, affirmed a New York District Court decision allowing an undocumented worker injured in a construction accident to recover compensatory damages for lost US earnings. Other published decisions that have considered *Hoffman* have held that *Hoffman* does not preclude recovery for unpaid wages under the Fair Labor Standards Act (FLSA) or discrimination under Title VII of the Civil Rights Act (Title VII). See, e.g., *Chellen* v. *John Pickle Co., Inc*., 446 F.Supp.2d 1247 (N.D.Okla. 2006) (holding that *Hoffman* does not preclude an award of back pay for work actually performed under the FLSA or Title VII). In what may be the most thorough analysis of *Hoffman* by a federal court, the US District Court in New Jersey made clear that coverage of undocumented workers under the FLSA is not inconsistent with the IRCA. *Zavala* v. *Wal-Mart Stores, Inc.*, 393 F.Supp.2d 295, 322 (D.N.J. 2005).

84. Decisions by the NLRB continue to uphold the principle that undocumented workers are covered employees under the National Labor Relations Act (NLRA). In *Concrete Form Walls, Inc.*, 346 NLRB No. 80 (2006), the NLRB rejected the employer's contention that undocumented workers are not "employees" within the meaning of the NLRA, and determined that these individuals were valid voters in a union representation election. Further, the NLRB concluded that even if the employees were undocumented workers, the employer could not rely on that status to justify an unlawful discharge based on anti-union animus. Finally, given the coercive impact that such discharges would have on other similarly situated employees within the small bargaining unit, the Board concluded that traditional remedies would be insufficient to allow a fair rerun election, and ordered the extraordinary remedy of requiring the employer to bargain with the union based on the union's pre-election showing of majority support. In large part, the NLRB found this remedy appropriate because the remainder of the employer's workforce – almost entirely Spanish-speaking employees with questionable authorization to work in the United States – was particularly vulnerable to the threat inherent in the discharges: vote in the election and risk having your status questions.

85. With regard to measures taken or envisaged to address the impact of the *Hoffman* decision, the Government indicates that it respectfully disagrees with the CFA's conclusions on the "inadequacy" of the remedies against anti-union discrimination resulting from the *Hoffman* decision and reiterates that the available remedies are not inadequate to protect freedom of association. There is no credible empirical evidence that post-*Hoffman* remedies available to undocumented workers have proven ineffective in protecting their right to join or form unions. As explained by the Supreme Court in *Hoffman*, employers that are found to violate the rights of covered employees under the NLRA remain subject to significant sanctions.

86. Not long after the *Hoffman* decision, the NLRB's Office of the General Counsel prepared a memorandum setting out the remedies that remain available to the NLRB in cases involving the dismissal of workers who secure their employment through criminal fraud. As explained in prior US observations, such remedies include back pay for work performed; reinstatement where an employer knowingly hires an undocumented worker, if the employee obtains legal authorization to work in the United States; orders that an employer cease and desist its violations of the NLRA, subject to contempt proceedings; and back pay in non-discharge situations where a worker has continued to be employed but at unlawfully imposed terms (e.g., unilateral change in pay or benefits). The NLRB may

also seek formal settlements for employees in cases where employers knowingly hire undocumented workers and use their lack of work authorization to threaten and discharge them in retaliation for union-related activities. In addition, the General Counsel has advised NLRB regional offices to seek to compel an employer to continue to assist undocumented workers in their efforts to become regularized, if the discontinuance of such assistance is improperly motivated by anti-union sentiment. Perhaps most importantly, the NLRB continues its practice of not inquiring as to the status of an individual's presence in this country during investigative proceedings. Such an approach minimizes the likelihood that an employee's status would become an issue during an NLRB investigation. In fact, in *Hoffman*, the issue of immigration status only arose because the employee admitted on the witness stand that he was undocumented throughout the back-pay period.

87. The US President has recommended passage of comprehensive immigration reform to address all aspects of the US immigration system, and the US Congress is engaged in a wide-ranging national debate on immigration policy. During this debate, worker and employer representatives have had and will continue to have an opportunity to express their views on all aspects of immigration policy.

88. In conclusion, the Government indicates that contrary to concerns raised immediately after the issuance of the *Hoffman* decision, federal and state court decisions that have considered *Hoffman* have not supported the conclusion that post-*Hoffman* remedies available to undocumented workers under the NLRA are inadequate to protect their rights to freedom of association. Similarly, the actions of federal agencies, by continuing to enforce US labour laws, regardless of a worker's immigration status, rebut the notion that undocumented workers lack sufficient access to remedies for enforcing worker rights. Accordingly, the US Government respectfully disagrees with the CFA's concern that the *Hoffman* decision has had a negative effect on the protection of freedom of association rights.

89. *The Committee takes due note of the detailed information provided by the Government with regard to the impact of and reference to the* Hoffman *decision in subsequent jurisprudence, largely concerning compensation for damages in cases of occupational accidents. Notwithstanding the analysis of the NLRB General Counsel relating to formal settlements in certain cases and the encouragement of assistance to undocumented workers to enable them to become regularized, the Committee recalls that the remedies available as a result of the* Hoffman *decision are limited to: (1) a cease and desist order in respect of violations of the NLRA; and (2) the conspicuous posting of a notice to employees setting forth their rights under the NLRA and detailing the prior unfair practices, with a possible sanction in the case of contempt. The Committee once again notes that such remedies do not however sanction the act of anti-union discrimination already committed, but only act as possible deterrents for future acts, an approach which is likely to afford little protection to undocumented workers who can be indiscriminately dismissed for exercising freedom of association rights without any direct penalty aimed at dissuading such action [see 332nd Report, para. 609]. In light of the above, and given the recent steps taken for comprehensive immigration reform, the Committee requests the Government to take steps, within the context of the ongoing debate in this regard, to consult the social partners concerned on possible solutions aimed at ensuring effective protection for undocumented workers against anti-union dismissals. It requests the Government to keep it informed of developments in this regard.*

Case No. 2502 (Greece)

90. The Committee last examined this case at its March 2007 meeting and on that occasion reached the following recommendations [344th Report, paras 1000–1023]:

– In the light of the fact that the supplementary pension funds of bank employees have already been integrated by the Government into a single public fund by Act No. 3371/2005, the Committee requests the Government to convene the employers or employers' organizations and the workers' organizations concerned to full consultations as soon as possible, in order to ensure that the future of the supplementary pension funds of bank employees and of their assets is determined by mutual agreement of the parties to the collective agreements by which the supplementary pension funds were set up, and to which only they contributed, and to amend Act No. 3371/2005 to reflect the agreement of the parties. The Committee requests to be kept informed of developments in this respect.

– Observing that supplementary pension schemes can legitimately be considered as benefits that may be the subject of collective bargaining, the Committee requests the Government to take all necessary measures as soon as possible to amend section 2, paragraph 3, of Act No. 1876/1990 so as to ensure that supplementary pension schemes may be the subject of collective bargaining. The Committee requests to be kept informed of developments in this respect.

91. In a communication dated 3 July 2007, the Greek Federation of Bank Employee Unions (OTOE) provides additional information according to which despite the strong and clear recommendation of the Committee, the Greek Government continues to violate the collective agreements of bank employees and refuses to convene the employers and OTOE to full consultations concerning the future of the supplementary pension funds of bank employees and their assets. The complainant attaches letters exchanged between the Secretary-General of Union Network International (UNI) and the Minister of Economy and Finance on this issue. In a letter dated 25 April 2005, the Secretary-General of UNI commends the commitment made by the Minister to start substantial dialogue on the implementation of the Committee's recommendations at a meeting held together with the OTOE leadership on 25 April 2007. In a letter dated 12 June 2007, however, he expresses disappointment at the fact that no further meeting was held. In a letter dated 14 June 2007, the Minister informs the Secretary-General of UNI that all the undertakings of the Government shall be carried out to the full; however, it is the Government's own prerogative to determine the time frame of the implementation of its policy and such implementation could not possibly be determined by external factors. In a letter dated 22 June 2007, the Secretary-General of UNI expresses disappointment at the delay in opening meaningful dialogue between the Government, OTOE and the banks, a delay which is escalating tensions between the parties involved and leads to conclude that the Government is only paying lip service to the ILO. Stressing that the ILO is not an "external factor", he urges the Government to avoid any further delays. In a communication dated 10 October 2007, the complainant indicates that the dialogue procedure has not started yet. In a communication dated 30 October 2007, the complainant forwards additional information.

92. In a communication dated 27 August 2007, the Government reaffirms that in Greece, collective bargaining and collective agreements constitute a basic pillar of the social state. The said agreements are concluded following expanded social dialogue with broad social and political consent. Therefore, the Government's commitment to the institution of collective bargaining is indisputable.

93. The Government further indicates that the political leadership of the Ministry, in consultation with representatives of OTOE and the banks concerned, decided to hold a series of meetings, with a view to discussing the conclusions and recommendations of the Committee. The first tripartite meeting between the representatives of the Government, the banks and the OTOE was held on 2 August 2007; during the meeting, issues related to the supplementary pension funds of bank employees as well as to Act No. 3371/2005 were discussed. The next tripartite meeting was to be held on 28 August 2007. However, on

16 August 2007, general elections were called, to be held on 16 September 2007; the next tripartite meeting would be arranged as soon as the new government assumed duties.

94. *The Committee takes note of the information provided by the Government, according to which pursuant to the conclusions and recommendations of the Committee, a first tripartite meeting between the representatives of the Government, the banks and the OTOE was held on 2 August 2007 in order to discuss issues related to the supplementary pension funds of bank employees as well as to Act No. 3371/2005. The next meeting was initially to be held on 28 August but as general elections were called for 16 September 2007, it had to be postponed. Emphasizing that it is important that during consultations the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise, the Committee requests the Government to resume full and frank consultations with the OTOE and banks as soon as possible, in order to ensure that the future of the supplementary pension funds of bank employees and of their assets is determined by mutual agreement of the parties to the collective agreements by which the supplementary pension funds were set up, and to which only they contributed, and to amend Act No. 3371/2005 to reflect the agreement of the parties. The Committee requests to be kept informed in this respect.*

95. *Noting that the Government has not provided any information in respect of the Committee's recommendation to amend section 2, paragraph 3, of Act No. 1876/1990 so as to ensure that supplementary pension schemes may be the subject of collective bargaining, the Committee requests the Government to keep it informed of any steps taken in this regard and draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case. The Committee also requests the Government to send its reply to the additional information submitted by the OTOE in a communication dated 30 October 2007.*

Case No. 2259 (Guatemala)

96. The Committee last examined this case at its meeting in June 2007 and on that occasion requested the Government to: (1) confirm that the trade union official Ms Edna Violeta Díaz has been effectively reinstated in the post she formerly occupied; and (2) report specifically on the situation of the trade unionist Ms Cobox Ramón and on the situations of other members of the SITRASEC executive committee dismissed in 2004. Furthermore, the Committee requested the Government to send its observations on the following pending issues regarding: (a) practices contrary to collective bargaining in the University of San Carlos de Guatemala and the need for the authorities to take steps to ensure that the parties reach an agreement that puts an end to the existing collective dispute; (b) the allegations concerning illegal dismissals, disciplinary proceedings, dismissals without just cause on grounds of reorganization, and transfers intended to force workers belonging to UNSITRAGUA in the Office of the Attorney-General of the Nation to resign, in connection with which it had requested the Government to keep it informed of any pending judicial decisions and inform it as to whether the other dismissed or transferred workers had initiated legal or administrative proceedings and, if so, to inform it of the decisions taken; and (c) the alleged supervision and interference by the State in the management of trade union funds, in connection with which the Committee had requested the Government to ensure that the functions of the Superintendent for Tax Administration were brought into line with the principles relating to the financial autonomy of trade union organizations, and, in consultation with the trade union confederations, to modify the legislation as necessary in this regard, and to keep it informed of the measures taken [see 346th Report, paras 49–53].

97. In its communications dated 13 February and 19 March 2007, the Government states, with regard to trade union official Ms Edna Violeta Díaz, that: (1) the National Civil Service

Board, on 10 October 2005, upheld the complaint that had been filed, affirming that membership of the executive committee of the Trade Union of Workers of the Secretariat of Public Works of the First Lady of the Republic (SOSEP) does not constitute grounds for dismissal; and (2) SOSEP claimed to have examined the corresponding judgements without finding any instructions to reinstate Ms Díaz Reyes, however, it was aware of the ruling issued by the National Civil Service Board and was fully prepared to take the action indicated by this body. *In these circumstances, while the Committee takes note of the willingness of SOSEP, it requests the Government to ensure that the trade union official Ms Edna Violeta Díaz has been reinstated in her post.*

98. With regard to the alleged supervision and interference by the State in the management of trade union funds, in connection with which the Committee had requested the Government to ensure that the functions of the Superintendent for Tax Administration were brought into line with the principles relating to the financial autonomy of trade union organizations, and, in consultation with the trade union confederations, to modify the legislation as necessary in this regard, and to keep it informed of the measures taken, in its communication of 29 March 2007, the Government attached a report from the Superintendent for Tax Administration stating that trade unions, as legal persons organized in accordance with the law, are recognized under the tax legislation in force as taxpayers. However, in view of the purposes for which trade unions are established, the tax laws grant them certain exemptions, but this does not exonerate them from the obligation to register as taxpayers with the Tax Administration. Trade unions are therefore under an obligation to register as taxpayers on the Unified Taxation Register, where they are assigned a taxpayer identification number. With regard to the exemptions available to trade unions, it should be specified that the Act governing the taxation of revenue stamps and special sealed paper for notarial records and the Act governing the extraordinary and temporary tax in support of the peace treaties establish that legally authorized non-profit-making associations and foundations are exempt from the above taxes provided that their income or assets come from donations or from ordinary or extraordinary membership fees and that they are used for the purposes for which the organization was created. For its part, the Taxation of Income Act, under the reform contained in Decree No. 18-2004, exempts the income and assets of associations and foundations from the payment of this tax provided that their income or assets come from donations or from ordinary or extraordinary membership fees and that they are used for the purposes for which the organization was created. That is to say, in order for the assets of associations and their income to benefit from the exemption established by law, they must comply with two legal requirements: first, the assets must come from ordinary or extraordinary membership fees or from donations, and second, the income must be used for the purposes for which the organization was created and under no circumstances may associations distribute, directly or indirectly, profits or goods among their members. The Value Added Tax Act, Decree No. 27-92 of the Congress of the Republic, does not exempt the purchases or sales carried out by trade unions or the services they provide, therefore, if they carry out any activities specified under this law, they must make out an invoice. It should be noted that as a result of the express repeal of article 9, paragraph (c) of Decree No. 26-95 of the Congress of the Republic, the Financial Products Act, tax must be paid on the interest credited to trade union accounts. It can therefore be concluded that trade unions must register on the Unified Tax Register and, if they carry out activities subject to taxation, for example, the sale of goods or provision of services, even when these benefit their members, they are under an obligation to draw up invoices and pay the corresponding taxes, and therefore, they must keep accounts and records of their taxable activities and operations. In accordance with the above, the second paragraph of article 46 of the Taxation of Income Act establishes that the taxpayers who are not obliged by law to keep complete accounts, apart from those persons who earn their income as employees and professionals, must keep at least daily accounts of income and expenditure and an inventory log, in which they must note their existing assets and debts at the beginning and end of the tax year. Finally, in accordance

with the provisions of article 37 of Decree No. 27-92 of the Congress of the Republic, the Value Added Tax Act, all taxpayers must keep an up to date record of purchases made and services received and another of sales completed and services provided. *The Committee takes note of this information and concludes from the Government's statement that there has been no interference in the financial affairs of the trade unions.*

99. With regard to the allegations concerning illegal dismissals, disciplinary proceedings, dismissals without just cause on grounds of reorganization, and transfers intended to force members of UNSITRAGUA at the Office of the Attorney-General of the Nation to resign, in connection with which the Committee had requested the Government to keep it informed of any pending judicial decisions and inform it as to whether the other dismissed or transferred workers had initiated legal or administrative proceedings and, if so, to inform it of the decisions taken, the Committee takes note that in its communication dated 29 June 2007, the Government once again sent the observations that it had already made in relation to this case. *In these circumstances, the Committee once again requests the Government to keep it informed of the pending judicial decisions and to inform it as to whether the other dismissed or transferred workers have initiated legal or administrative proceedings and, if so, to inform it of the decisions taken.*

100. *Lastly, the Committee once again requests the Government to report specifically on the situation of the trade unionist Ms Cobox Ramón and the situations of the other members of the SITRASEC executive committee dismissed in 2004.*

Case No. 2339 (Guatemala)

101. At its meeting in March 2007, the Committee requested the Government to ensure that the commitment made by the employer's representative (General Directorate of Civil Aviation) before the Labour Inspectorate to reinstate trade unionist Ms Mari Cruz Herrera was respected [see 344th Report, para. 77]. *The Committee notes that the Government's reply does not refer to this matter and it therefore reiterates this recommendation.*

102. With regard to the dismissal of the trade unionists Mr Emilio Francisco Merck Cos and Mr Gregorio Ayala Sandoval, the Committee took note of the Supreme Court of Justice ruling regarding *amparo* proceedings (appeal for protection of constitutional rights) and the Constitutional Court ruling, dated 4 July 2000 and 2 April 2001, respectively, in which the *amparo* appeal was denied on the grounds that the dismissal of the trade unionists was justified because they had been absent from their posts without their employer's permission. In this context, the Committee recalled that the dismissal of trade unionists for absence from work without the employer's permission does not appear in itself to constitute an infringement of freedom of association [see 344th Report, para. 78].

103. In relation to the above recommendation, in its communication dated 18 January 2007 (received in June 2007), the Union of Workers in the Ministry of Agriculture, Cattle-raising and Food (SITRAMAGA) describes the aforementioned ruling of the Constitutional Court as political and refers to a previous ruling (on another case), which concludes that, during collective bargaining, the employer is bound by law to obtain judicial authorization to dismiss trade unionists. The union accordingly requests the Committee on Freedom of Association to examine the case and hopes that the authorities will pay compensation to those who were dismissed.

104. In its communication dated 23 July 2007, the Government states that the ruling on the dismissal of the two trade union members cannot be amended or revoked, and that furthermore, in this particular case, all the legal possibilities of redress provided for by law to challenge the ruling have been exhausted and were unsuccessful. In this case, the complainant is seeking to have the ruling revoked by citing a ruling in a similar case,

which has been sent as an attachment with the new allegations in this case and maintains that a legal precedent has been set. With regard to these claims, the Government states that, in order to set a legal precedent, a series of judicial rulings has to be made as established by law, whereas, in this case, the complainant refers to only one ruling. According to national legislation, in order to set a legal precedent, three consecutive and identical sentences have to be pronounced and they cannot be retroactive.

105. The Government adds that the rulings handed down by all the country's courts are in line with the laws in force. The Government therefore rejects the complainant's claim that the Constitutional Court in this case handed down a political rather than a legal ruling.

106. *The Committee notes that, according to the documentation transmitted, the judicial authority initially ordered the reinstatement of the two trade unionists, but in the subsequent proceedings (appeal,* amparo*) the rulings were different. The Committee notes that the last ruling (Constitutional Court) upholds the previous ruling against reinstatement, but is based on procedural arguments, stating that "if the plaintiffs considered that the reason for their dismissal was unjust, they could, in accordance with the provisions of article 78, have initiated proceedings against their employer in the labour and social welfare courts in order to establish whether or not their dismissal was justified". The Committee further notes that the rulings state that the trade unionists in question had been "elected as observers in the negotiations that took place directly between the trade union and the authorities" (Ministry of Agriculture) and that "they abandoned their work". The Committee notes, lastly, that the ruling of the Constitutional Court is final. In these circumstances, given that the dismissal of both trade unionists and their abandonment of their work might have been related to their role as observers in the collective bargaining process, the Committee requests the Government to hold a meeting with the parties concerned in order to examine this matter and to consider the issue of compensation raised by the complainant organization.*

Case No. 2390 (Guatemala)

107. At its March 2007 session, the Committee made various recommendations on issues still pending [see 344th Report, paras 79–81]. In particular, as regards the allegations concerning the dismissal of 52 workers at Horticultura de Salamá in 1997 following the formation of the Trade Union of Horticultural Workers of Salamá (SINTRAHORTICULTURA) and all the judicial proceedings in which the reinstatement of the workers had been ordered, the Committee took note of the Government's communications stating that most of the parties who had brought the case had withdrawn from the proceedings they had initiated and that two workers remained to be reinstated in their jobs and had not been reinstated because their home address was unknown. The Committee requested the Government to do everything in its power to see that the workers were reinstated. In addition, as to the allegations regarding the dismissal of four workers shortly after the formation of the trade union, the pressure exerted on them, the persecution and constant harassment of union members and the acts of anti-union discrimination against members and leaders of the Union of Workers of NB Guatemala (SITRANB) at the NB Guatemala company, the Committee had requested the Government to take immediate measures to ensure that an independent inquiry was carried out and, if it were determined that the dismissals and other anti-union acts were linked to the formation of the trade union organization, to ensure that the workers were immediately reinstated and paid the wage arrears owed to them and that sufficiently dissuasive sanctions were imposed on the enterprise for the anti-union acts committed. Lastly, as to the allegations presented by the Union of Workers of the Technical Institute for Training and Productivity (STINTECAP) concerning acts of interference, pressure and threats against the workers to force them to leave the trade union, the Committee had requested the Government to take the necessary measures to ensure that an independent inquiry was carried out into the allegations and to

keep it informed in that regard, as well as to inform it of the result of the tripartite committee's attempts at conciliation.

108. In its communications dated 29 March and 4 May 2007, the Government refers to its previous observations concerning the court-ordered reinstatement of the remaining two SINTRAHORTICULTURA unionists who had not withdrawn from judicial proceedings. According to the documents sent by the Government, Ms María Gilberta Garrido Marroquín and Ms Cristina García Garrido have not appeared before the court to have the reinstatement orders implemented. The Government has learnt that they are currently abroad.

109. As to the inquiry requested by the Committee into the dismissals of and anti-union acts against SITRANB members and leaders, the Government attaches the decision by the Human Rights Procurator dated 18 January 2007, in which, having carried out the relevant inquiry, he concludes that there are no grounds for stating that there has been a violation of the human right to freedom of association of the members of the SITRANB executive and consultative committee. The most relevant parts of this decision are reproduced below.

> The Human Rights Procurator, exercising his authority and complying with the Constitution and the law in question, opened an investigation into a violation of the human right to freedom of association on the basis of attacks on members of the committee of the Union of Workers of the NB Guatemala SA assembly plant company (SITRANB), perpetrated by fellow employees. According to the complaint, women belonging to this trade union have been the target of threats and physical violence from fellow employees, even when in the presence of other female workers.
>
> In accordance with the law, this institution began investigating the complaint, seeking a detailed report from the authorities of the institution involved in this case and requesting that an inspection take place, with a view to strengthening the investigation and to underpinning its conclusions.
>
> According to the report by Mr Edgar Eduardo Sánchez García, the Deputy General Labour Inspector, the labour inspectors Mr César Roberto Gatica Lemus and Mr Wiliam Henry Mazariegos Concoha stated that as soon as the trade union was formed in the NB Guatemala SA assembly plant company, a labour inspector was appointed to ensure that the members of the executive and consultative committee were able to perform their trade union duties, notifying the employer to ensure that the trade union was recognized as part of the company, as well as to protect wages and to avoid any actions that could restrict workers' minimum rights. The report also states that by means of an alternative dispute resolution mechanism for economic and social questions, they succeeded in having the parties negotiate a collective agreement on working conditions, of which only 11 of 57 articles remained to be adopted, and, at the trade union's request, administrative remedies were exhausted when both parties requested the Labour and Social Welfare Court to rule on the points of disagreement in the collective dispute. The labour inspectors' report states that three complaints have been submitted by members and non-members of the Union of Workers of the NB Guatemala SA company. In the first, a group of workers reported a violation of their right to organize and the refusal of members of the executive committee to accept their voluntary resignation from the trade union. The second complaint, submitted by 60 workers, was against the members of the executive committee of the trade union in question for violation of their trade union rights, while the third complaint, submitted by 170 workers, reported reprisals, intimidation and violations of their right to work. It was this complaint in which the workers considered that all administrative remedies had been exhausted by the proceedings before the Labour and Social Welfare Court against the trade union for violations of labour law. Moreover, according to Mr Enexton Emigdio Gómez Meléndez, Director-General for Labour of the Ministry of Labour and Social Welfare, the members of the executive committee and the consultative council of the Union of Workers of the NB Guatemala SA company are not recorded by the Ministry as holding posts on the said executive committee and consultative council and therefore, such a representation cannot be accredited. As a consequence, it is appropriate to hand down the corresponding decision …
>
> DECIDES

That there are insufficient grounds for stating that there has been a violation of the right to freedom of association of the members of the executive and consultative committee of the Union of Workers of the NB Guatemala SA assembly plant company (SITRANB). This must be announced and filed.

110. *The Committee notes the information supplied by the Government. The Committee observes that the two Horticultura de Salamá trade unionists whose reinstatement was ordered by the courts are currently abroad. The Committee requests the complainant organization to inform these trade unionists of the court decision concerning their reinstatement so that they can act on it as they see fit.*

111. *As to the allegations concerning dismissals and anti-union acts by the NB Guatemala company, the Committee notes the decision of the Human Rights Procurator in which he considers that no violation of freedom of association has taken place. The Committee invites the complainant organization to provide its comments in that regard if it so wishes.*

112. *Lastly, the Committee regrets that the Government has not sent the information requested on the allegations concerning INTECAP (acts of interference, pressure and threats against workers to force them to leave the trade union). Therefore, the Committee reiterates its earlier recommendation, and again requests the Government to take the necessary measures to ensure that an independent inquiry is carried out into the alleged facts and to keep it informed in that regard, as well as of the result of the tripartite committee's attempts at conciliation.*

Case No. 2482 (Guatemala)

113. At its June 2007 meeting, the Committee made the following recommendations on the issues still pending [see 346th Report, para. 1097]:

(a) The Committee deplores the seriousness of the alleged events, which include the burglary of the CUSG headquarters and the theft of trade union property and documents, subsequent threatening phone calls to the trade unionist Carlos Humberto Carballo Cabrera, as well as the limited investigations carried out by the authorities.

(b) The Committee urges the Government to take the necessary measures immediately to reactivate and intensify the police and Public Prosecutor investigations into the alleged offences.

(c) The Committee firmly expects that the new investigations requested of the authorities will enable them to determine the motives behind the offences, to identify those responsible and punish them severely, and to make it possible to recover the stolen property. The Committee also requests the Government to guarantee the security of the trade unionists. It requests the Government to keep it informed on the progress of the investigations and any judicial decision which is handed down.

114. In its communication of 4 May 2007, the Government states that it was informed by the Office of the Special Public Prosecutor for Offences against Journalists and Trade Unionists of the Public Prosecutor's Office that crime scene experts from the National Civil Police and the Public Prosecutor's Office visited the scene of the crime and stated in their reports that "fragments of latent prints were observed, but they lacked the necessary general and specific characteristics for identification through a comparative study". The Office of the Special Public Prosecutor received the complaint and subsequently the report from the National Civil Police investigators stating that no one had been found at the premises where the offence was committed and that, to date, none of those affected have come forward to the Office of the Special Public Prosecutor, even though the investigation is still under way.

115. *The Committee takes note of this information and notes with regret that, although the burglary of the CUSG headquarters and the theft of trade union property and documents took place on 6 April 2006 [see 346th Report, para. 1084], the investigations have not yet revealed the identity of the perpetrators. The Committee firmly expects that all the necessary measures will be taken to add impetus to the investigations in order to identify and punish without delay those responsible for the burglary and the theft of property and documents and for the threatening phone calls to the trade unionist Mr Carlos Humberto Carballo Cabrera. The Committee requests the Government to keep it informed in this regard and hopes that the investigations will enable the CUSG to retrieve its stolen documents and property.*

Case No. 1890 (India)

116. The Committee last examined this case, which concerns dismissal, transfer and suspension of members of the Fort Aguada Beach Resort Employees' Union (FABREU) following a strike, and the employer's refusal to recognize the most representative union for collective bargaining purposes, at its November 2005 session where the Committee requested the Government to rapidly take all appropriate measures to ensure that the pending issues, specifically, the transfer of Mr Sitaram Rathod, the dismissal of Mr Shyam Kerkar and the suspension of Mr Mukund Parulekar, as well as the right of the FABREU to bargain collectively, are resolved [see 338th Report, paras 176–179].

117. In its communication dated 20 April 2007, the Government indicates that the management of the Fort Aguada Beach Resort has settled the cases of Messrs Sitaram Rathod, Shyam Kerkar and Mukund Parulekar by signing on 2 August 2006, a full and final settlement under sections 2(p) and 18(1) of the Industrial Disputes Act, 1947. According to the said settlement, the three workers were paid rupees (Rs) 9,50,000/-, 7,00,000/- and 6,50,000/-, respectively. Therefore, the Government requests that the present case against India be treated as closed.

118. *The Committee notes the information provided by the Government with regard to the three workers who suffered the consequences of a strike carried out in November 2004. The Committee regrets, however, that the Government provides no information on whether the enterprise management has recognized the FABREU for collective bargaining purposes. The Committee recalls from the previous examinations of this case that an agreement was signed in October 1995 between the management and a newly formed organization, Fort Aguada Beach Resort Workers' Association, thus recognizing it as the sole bargaining agent in the company and derecognizing the FABREU. The Committee had concluded from the evidence at its disposal that no doubts existed that the FABREU was the most representative at the Fort Aguada Beach Resort and had urged the Government to take appropriate conciliatory measures to obtain the employers' recognition of the FABREU for collective bargaining purposes [see 307th Report, paras 366–375]. The Committee therefore once again requests the Government to indicate whether the FABREU is currently recognized by the enterprise management as a collective bargaining agent and participates, through negotiation of collective agreements, in regulation of terms and conditions of employment at the Fort Aguada Beach Resort.*

Case No. 2364 (India)

119. The Committee examined this case at its March 2007 meeting [see 344th Report, paras 88–92]. On that occasion, it once again requested the Government: (1) to amend the Tamil Nadu Government Servants Conduct Rules and the Tamil Nadu Essential Services Maintenance Act (TNESMA) so as to ensure that public servants, other than those engaged in the administration of the State, enjoy collective bargaining rights, that priority is given

to collective bargaining as the means of settling disputes arising in connection with the determination of terms and conditions of employment of public service, and that teachers are able to exercise the right to strike; (2) to return the office building to the Tamil Nadu Secretariat Association; (3) to provide information on the complainants' request concerning monetary compensation to the families of the 42 employees who had lost their lives; and (4) to indicate whether thorough consultations with trade unions have been held in respect of pension benefits, previously unilaterally suspended by the Government, and whether any final agreement has been reached in this regard.

120. In its communication dated 19 April 2007, the Government submits information provided by the Tamil Nadu Government in reply to the Committee's recommendations. In particular, the Government indicates that the TNESMA, which restricted the right of public servants to agitate in support of their grievances, was repealed by the Government of Tamil Nadu. The Government considers, however, that in the interest of the public, Rule 22 of the Tamil Nadu Government Servants Conduct Rules should not be repealed. With regard to the Committee's request to give priority to collective bargaining when determining the terms and conditions of employment, the Government indicates that its approach towards the employees has now become cordial. Whenever necessary, public employees are permitted to meet the ministers and officials to discuss their problems. Furthermore, the Government has taken an initiative to give several concessions in order to settle the demands, which previously unsettled, prompted public employees and teachers to resort to strike in July 2003. The Government submits a list of concessions made on pension benefits, recruitment, deletion of Rule 40-A of the General Rule of Tamil Nadu State and Subordinate Service, etc. According to the Government, in view of this initiative taken by the Government of Tamil Nadu, many outstanding demands of the employees have been conceded.

121. The Government further indicates that the Office Building of the Tamil Nadu Secretariat Service Association was handed over to its President when the Association gained back its recognition. With regard to the complainant's request concerning monitory compensation to the families of the 42 employees who had lost their lives, the Government indicates that an order have been issued to treat the period of absence of government employees and teachers who lost their lives during the strike as "duty", therefore, the relief and terminal benefits to which the workers were entitled, have been granted to their families.

122. *The Committee welcomes the information provided by the Government, in particular, the repeal of the TNESMA. It regrets however that Rule 22 of the Tamil Nadu Government Servants Conduct Rules prohibiting the right to strike for government employees has not been amended. The Committee refers to its first examination of this case when it recalled that public servants should enjoy the right to strike, provided that the interruption of services does not endanger the life, personal safety or health of the whole or part of the population. The right to strike may however be restricted or prohibited for public servants exercising authority in the name of the State [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fourth edition, 1996, paras 532 and 534]. In public service of fundamental importance and services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population, a certain minimum service may be requested, but in this case, the trade union organizations should be able to participate, along with employers and the public authorities, in defining the minimum service [see* ***Digest****, op. cit., paras 556 and 557]. The Committee noted that by virtue of Rule 22 of the Tamil Nadu Government Servants Conduct Rules, the right to strike was prohibited for government employees, including teachers. The Committee therefore requested the Government to take the necessary measures to amend the Tamil Nadu Government Servants Conduct Rules so as bring them in line with the above freedom of association principles [see 338th Report, para. 975]. Arguments that civil servants do*

*not traditionally enjoy the right to strike because the State as their employer has a greater obligation of protection towards them have not persuaded the Committee to change its position on the right to strike of teachers. The Committee considers that the possible long-term consequences of strikes in the teaching sector do not justify their prohibition [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, paras 589 and 590]. The Committee expects that the necessary measures will be soon taken in order to repeal Rule 22 and requests the Government to keep it informed in this respect.*

123. *Furthermore, noting the list of concessions made by the Government to settle the demands for which the strike was conducted in July 2007, the Committee requests the Government to indicate whether these concessions came about as a result of free and voluntary negotiations with trade unions concerned.*

Case No. 2451 (Indonesia)

124. The Committee examined this case – which concerns allegations of dismissals of 58 trade union members at the PT Takeda Indonesia enterprise in retaliation for their request to negotiate with regard to the enterprise's failure to honour the collective agreement signed with the Pharmaceutical and Health Workers' Union "Reformasi" (FSP Farkes/R) at the Bekasi worksite – at its November 2006 meeting [see 343rd Report, paras 906–928]. On that occasion, the Committee took note of the settlement reached between the parties, regretted to observe that the authorities appeared to have acted in this case uniquely as a mediator without fully investigating the allegations of acts of anti-union discrimination and requested the Government to provide information on the actual state of collective bargaining in the PT Takeda Indonesia enterprise and to transmit a copy of the collective agreement in force.

125. In communications dated 8 March and 21 September 2007, the Government indicates that the case was settled in accordance with the legal provisions in force in the Republic of Indonesia. The Government sent a fact-finding mission to the company and found that all the dismissed workers had received the severance pay ordered by the Central Committee for the Settlement of Labour Disputes (P4P). Moreover, it was found that in November 2006 a new collective agreement was reached between the enterprise and the complainant union which came under new leadership. The Government attaches a copy of the collective agreement which has a duration from 5 January 2006 to 4 January 2008. The collective agreement addresses the terms and conditions of employment in the enterprise, including the issue of wages (Chapter VI, articles 23–34 contain provisions on basic wages, meal allowance, transport allowance, religious day allowance, bonus, etc.).

126. *The Committee takes note of this information.*

Case No. 2416 (Morocco)

127. During its last examination of this case at its meeting in November 2006 [see 343rd Report, paras 140–142], the Committee requested the Government to keep it informed of the outcome of the independent inquiry into the intervention by the police on 19 April 2005 and to communicate the verdicts handed in the cases of the employees on trial for obstructing the freedom to work, and in the case of Mr Hassan El Kafi as soon as they were given.

128. In its communications of 12 February and 4 May 2007, the Government sent the appeal verdicts in the cases of the employees on trial for obstructing the freedom to work and of Mr Hassan El Kafi. In both cases, the appeal court upheld the verdicts handed down in the

first instance. By Decision No. 7729, issued on 10 November 2005, the Court of Appeal of Casablanca upheld both the acquittal of Mr Hassan El Kafi on charges of obstructing the freedom to work and overturned his suspended one-month prison sentence and the fine of 200 dirhams for theft. By Decision No. 5791, issued on 27 June 2006 by the Court of Appeal of Casablanca, Abdellah Zefzaf, Nadia Rihani, Jawad Kennouni, Aziz Rouzi, Echaâli El Ouardi, Said El Janati, Hassan Khaireddine and Jilali Foudsi, trade unionists arrested during the dispute at the Valeo factory, were acquitted of obstructing the freedom to work. The Government adds that the dispute at the Valeo factory has ended.

129. *The Committee notes with satisfaction the rulings acquitting the trade unionists accused of obstructing the freedom to work. Noting the information provided by the Government to the effect that the Valeo factory dispute has ended and that the social situation is now stable, the Committee hopes that the necessary instructions will be given to the police to ensure that, in the future, their interventions are not disproportionate in relation to legitimate trade union activities.*

Case No. 2394 (Nicaragua)

130. At its meeting in March 2007, the Committee urged the Government to register the executive committee of the Trade Union of Employees in Higher Education "Ervin Abarca Jimenes" (SIPRES-UNI, ATD) without delay, to ensure that the union dues are paid over to it and to promote collective bargaining [see 344th Report, paras 133 to 135].

131. In its communication dated 11 June 2007, the Government reports that, as a result of the judgement issued by the Trade Union Associations Directorate on 21 May 2007, the executive committee of the Trade Union of Employees in Higher Education "Ervin Abarca Jimenes" (SIPRES-UNI, ATD) was registered and on 4 June 2007 the parties were notified.

132. *The Committee takes due note of this information. The Committee requests the Government to take the necessary measures to ensure that the union dues are paid over to the trade union in question and to promote collective bargaining, and to keep it informed in this respect.*

Case No. 2134 (Panama)

133. At its meeting in March 2007, the Committee made the following recommendations regarding the issues pending (dismissal of trade unionists for party political reasons following the political elections of 1999) [see 344th Report, para. 156]:

> The Committee expresses the hope that the 23 trade union officials not yet reinstated in their posts, will be reinstated in the near future and that the wages owed to them will be paid, and requests the Government to continue to take measures to this end. The Committee requests the Government to keep it informed in this respect.

134. In its communication dated 17 April 2007, the National Federation of Associations and Organizations of Public Servants (FENASEP) states that, of the 66 trade union officials who were illegally and unjustly dismissed from 14 state institutions by the previous administration, 16 have yet to be reinstated as the institutions in question have ignored the recommendations regarding reinstatement and the payment of outstanding wages made by the FENASEP–Ministry of Labour and Social Development bipartite committee. One trade union official, Raquel Bedoya (of the Association of the Ministry of Housing), has died. FENASEP adds that the National Institute of Culture has appointed trade union official Eric Justanino and that the National Institute of Professional Development and Training (INADEH) believes that former trade union official, Ms Mariana de Hall, does not have

the profile required to work in that institution because reports show serious misconduct: acts of aggression, arguments and disorderliness within the institution, a high percentage of absences, lateness, etc.

135. In its communications dated 10, 11 and 17 May 2007, the Government states that two trade union officials, Messrs Carlos Chial and Gustavo Jaime, have been appointed by INADEH and confirms the information from FENASEP regarding Ms Mariana de Hall. The Government states that the bipartite committee with the complainant organization has continued to meet and has recommended that the institutions where the dismissed trade union officials used to work reinstate them as permanent staff. The Government sends a list of the trade union officials who were dismissed and the public institutions where they used to work from which it can be concluded, as stated by FENASEP, that 16 of the trade union officials have not been reinstated. The Government states that it has not yet been possible to reinstate these trade union officials due to budgetary reasons and that the necessary financial management is in progress. The Government states that it will make every effort to comply with the Committee's recommendations gradually and to the extent possible. The Government highlights that the current policy of the Government is to respect the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

136. *The Committee takes note of the information provided by the Government and FENASEP. The Committee observes that since the previous examination of the case, seven more trade union officials have been reinstated, leaving 16 that have not been reinstated. The Committee requests the Government to continue its efforts to obtain the reinstatement of these trade union officials and the payment of their outstanding wages and to keep it informed in this regard.*

Case No. 2342 (Panama)

137. The Committee last examined this case at its November 2006 meeting [see 343rd Report, paras 165–168], and on that occasion requested the Government: (1) to continue taking the necessary measures to reinstate all of the 25 trade union officials who had been dismissed in August 1999 from the Ministry of Youth, Women, Children and Family (allegedly without cause, merely for belonging to a political party other than the one in power, in violation of the trade union immunity provided by law); and (2) to send its observations concerning the dismissal of trade union official Mr Pedro Alaín, stating in particular whether the investigation requested by the Committee at its November 2006 meeting had been initiated [see 343rd Report, para. 168].

138. In its communication of 17 April 2007, the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) states that, of the 25 dismissed union officials, ten remain to be reinstated and none have been paid the wages owed to them.

139. In its communications dated 10 and 11 May 2007, the Government states that trade union official Mr Pedro Alaín has been reinstated as part of the current government policy to observe the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and that it issued a decision to that effect on 12 January 2006. With regard to the 25 dismissed officials of the Ministry of Social Development (formerly known as the Ministry of Youth, Women, Children and Family), the Government states that some have been reinstated by the current Administration and that only ten have yet to be reinstated. The Government indicates that it has not yet been able to reinstate these ten officials for budgetary reasons and that the necessary financial measures are being taken. The Government states that it will do its utmost to comply, gradually and as far as possible, with the Committee's recommendations.

140. In its communication dated 29 October 2007, the Government informs that the ten remaining trade union leaders have been reinstated in the Ministry for Social Development or in other public institutions.

141. *The Committee notes this information with satisfaction. The Committee requests the Government to ensure payment of outstanding wages in accordance with the law.*

Case No. 2086 (Paraguay)

142. The Committee last examined this case, relating to the trial and sentencing in the first instance for "breach of trust" of the three presidents of the trade union confederations, the United Confederation of Workers (CUT), the Paraguayan Confederation of Workers (CPT) and the Trade Union Confederation of State Employees of Paraguay (CESITEP), Mr Alan Flores, Mr Jerónimo López and Mr Reinaldo Barreto Medina, at its meeting in June 2007 [see 346th Report, paras 145 and 146]. On that occasion, the Committee had expressed the hope that due process of law would be respected in the framework of the judicial proceedings initiated against the trade union officials and that the proceedings would be concluded in the near future and had requested the Government to send its observations without delay on the communication dated 6 June 2006 from CESITEP, which reported that the criminal proceedings had not been concluded and alleged further violations of procedural rights in the second instance (in particular the failure to produce the evidence requested to follow up on a development in the second instance).

143. In a communication dated 8 June 2007, the Government reported that the judicial case in question had been initiated in March 1998 following an investigation into the administration of the National Workers' Bank (BNT). In the ruling handed down in first instance, the then judge Hugo López had sentenced 23 persons to terms of imprisonment of ten, seven and four years for their part in the embezzlement of bank assets, those persons including the former bank president, who received the maximum sentence, along with the other former bank administrators. An appeal was lodged against the ruling before the Appeals Chamber. The trade unionists who were sentenced have sought to have the legal proceedings annulled on the grounds that they related to debt. For that purpose, they presented as alleged new facts the cases brought by the bankrupted BNT against the CESITEP, CUT and CPT, which had expired. After several months of investigation, the appeal was rejected by the court, and the defence again appealed against that decision. This was also unsuccessful on the grounds that the period allowed had elapsed, and the plaintiffs then appealed again in mid-2005. Faced with this situation, the Appeals Chamber referred the case to the Supreme Court of Justice, which means that examination of the original sentences has again been postponed until the appeal is decided. It is worth noting that, in December 2003, Alan Flores, Jerónimo López and Reinaldo Barreto Medina applied to the court to suspend the precautionary measures imposed on them (house arrest), basing their application on article 19 of the National Constitution and on sections 236, 250 and others of the Code of Criminal Procedure. The First Chamber of the Criminal Court of Appeal upheld the application and consequently suspended the measures imposed on the trade union officials, ordering them to report any change of address or travel outside the country in writing to the courts and to the police.

144. *The Committee takes note of this information. The Committee regrets the significant amount of time that has elapsed since the initiation of legal proceedings (almost ten years), expresses the hope that the proceedings will be concluded in the near future and requests the Government to inform it of the final ruling that is handed down in relation to the trade union officials in question.*

Case No. 2286 (Peru)

145. The Committee examined this case, in which it is alleged that, as a result of the establishment of a trade union, its General Secretary was dismissed and a criminal complaint filed against him, and that a number of workers belonging to the trade union were dismissed in order to weaken the organization, at its meeting in June 2006. On that occasion, the Committee requested the Government to keep it informed: (1) of the outcome of the criminal proceedings under way against Mr Leonidas Campos Barrenzuela for allegedly forging documents; (2) of the outcome of the action taken by the administrative authority with regard to the alleged intimidation of workers at Petrotech Peruana SA to force them to leave the trade union; and (3) of the outcome of the special visit to inspect Petrotech Peruana SA ordered by the administrative authority in relation to the alleged dismissal of various workers who belonged to the trade union for alleged serious misconduct, with the sole aim of weakening the new trade union [see 342nd Report, paras 143–147].

146. In a communication dated 25 October 2006, the Government states, with regard to the criminal complaint filed against Mr Leonidas Campos Barrenzuela, that the most recent communication sent by the Criminal Court of Piura reported that the complaint had been dismissed, the judge ruling that there were no grounds for instituting pre-trial proceedings for the offence of forging documents. Petrotech Peruana SA lodged an appeal against this ruling, which was upheld. On 9 August 2006, an official letter was sent to the Criminal Judge of Talara, part of the High Court of Justice of Piura, asking about the outcome of the appeal. To date, no response has been received from the Criminal Court regarding the outcome of the complaint.

147. As to the outcome of the special visit to inspect Petrotech Peruana SA ordered by the administrative authority in relation to the alleged dismissal of various workers who belonged to the Trade Union of Sea and Land Workers of Petrotech Peruana SA for alleged serious misconduct, with the sole aim of weakening the new trade union, the Government states in letter No. 6M-242-2005 dated 22 November 2005 that the legal adviser of Petrotech Peruana SA filed a report on the special inspection visit. In addition, the Regional Directorate for Labour and Employment Promotion in Piura sent documentation referring to the special inspection visit ordered under section 16.3 of Legislative Decree No. 910. The documents state that at 10 a.m. on 28 October 2005, a labour inspector went to Petrotech Peruana SA, where representatives of the enterprise and the trade union were present. The substance of the Labour Inspectorate's report is as follows: (1) it was found that Mr Leonidas Campos Barrenzuela had been reinstated in his post by Petrotech Peruana SA on 24 December 2004; (2) the inspector took note of reports referring to intimidation of leaders and workers into leaving the trade union, taking statements first from the employers and subsequently from the workers. Petrotech Peruana SA stated that it upholds the law and workers' rights, both collective and individual, and emphatically denied all accusations of hostility towards its workers. It stated that it has concluded two collective agreements, with another being negotiated with the workers, and that in March 2005, it paid its workers significant additional wages as a share of profits. The enterprise explained that job transfers were permitted by law, provided that they did not affect the worker's grade or wages, and added that a worker's membership or non-membership of the trade union had absolutely no bearing on a transfer from an offshore platform to an onshore site or vice versa, since the employment contract signed with the workers expressly states that they may be relocated for operational reasons; (3) the workers stated that as soon as the trade union was established, the enterprise challenged its registration, arguing that there were irregularities in the signatures to its founding statutes; however, the Ministry of Labour confirmed the registration on 4 December 2002; and (4) the labour inspector observed that the trade union is currently affiliated to FENUPETROL, whereas in the complaint presented to the ILO in 2003, it was affiliated to

the FENPETROL. The inspector notes that both parties endorsed the contents of the complaint. Once the special inspection visit procedures were finished, the inspector prepared a report for her superiors.

148. The Government adds that, on 31 October 2005, the Trade Union of Sea and Land Workers of Petrotech Peruana SA sent the Head of the Area Division of the Ministry of Labour and Employment Promotion in Talara (Piura) a document elaborating on and substantiating the trade union's statements during the special inspection visit. Likewise, on 22 November 2005, Petrotech Peruana SA sent the Head of the Area Division a document clarifying the report of the special inspection visit. It should be noted that the Regional Directorate for Labour and Employment Promotion in Piura, in fulfilment of its role to assist in resolving all forms of labour disputes, summoned Petrotech Peruana SA and the Trade Union of Sea and Land Workers of Petrotech Peruana SA to an out-of-court meeting on 14 November 2005 at 11 a.m. at its offices. In a decision of 21 November 2005, the Regional Directorate for Labour and Employment Promotion in Piura ruled that the special inspection visit was completed, noting in one of its preambular paragraphs that any issues in dispute as a result of the inspection undertaken would not affect the parties' rights. According to the Government, it can be seen from this that the special inspection visit took place in a congenial atmosphere, with the workers cooperating and speaking without hindrance.

149. *The Committee takes note of these statements and requests the Government: (1) to provide information regarding the outcome of the appeal lodged by Petrotech Peruana SA against the decision of the Criminal Court of Piura to dismiss the complaint against Mr Leonidas Campos Barrenzuela for allegedly forging documents; and (2) to inform it whether, subsequent to the special visit to inspect Petrotech Peruana SA, legal or administrative action was taken in relation to the alleged dismissals of workers belonging to the trade union.*

Case No. 2452 (Peru)

150. The Committee last examined this case at its November 2006 meeting, and on that occasion requested the Government to ensure that the deduction of trade union membership dues was carried out by the enterprise Electro Sur Medio SAA and that wages and other payments provided for in law and in the applicable collective agreement were paid to the workers of that enterprise effectively and without delay. In addition, the Committee expressed the hope that once the trade union had complied with the legal requirements, it would be able to engage in collective bargaining and obtain union leave which is extraordinarily important in the current insolvency proceedings affecting the enterprise. The Committee requested the Government to keep it informed in that respect [see the Committee's 343rd Report, paras 1049–1064].

151. In a communication dated 12 March 2007, the Government states with regard to the matter of union leave and the payment of travel and daily expenses for trade union officials, that the single law concerning collective labour relations, Supreme Decree No. 010-2003-TR published on 5 October 2003, governs freedom of association, collective bargaining and strikes, these rights being enshrined in article 28 of the political Constitution. Section 10(d) of the law in question stipulates that "the trade union organization shall be required to communicate to the labour authority any amendments to its by-laws, providing a copy of the new text, as well as communicating to that authority and to the employer the list of members of the union's executive body, indicating any changes that have been made, within the subsequent five working days". This guarantees the collective rights of the workers in the present case. It was noted at the time that the Single Trade Union of Workers and Employees of Electro Sur Medio SAA at Ica and Nazca and Allied Workers was not complying with the law, and the enterprise and the administrative labour authority

could therefore not recognize its right to benefit from trade union representation until such time as it complied with the statutory requirements. A direct consequence of this has been the refusal of Electro Sur Medio SAA to initiate negotiations on the list of claims. An official letter was sent to the Ica Regional Directorate for Labour and Employment Promotion stating that the union had informed the authority of the names of its officers but had to date not received any reply. At the same time, as regards the Committee's recommendation concerning the payment without delay of wages and other benefits provided for in the law and the collective agreement to workers at Electro Sur Medio SAA, the inspection visit conducted on 11 October 2005 at Electro Sur Medio SAA on the instructions of the Ica Regional Directorate of Labour and Employment Promotion showed that the company was meeting its obligations in respect of the payments in question. The Government indicates that, as soon as it receives the information requested from the Ica Regional Directorate, it will forward it to the Committee.

152. *The Committee takes note of this information, and hopes that once the legal requirements are met, the Single Trade Union of Workers and Employees of Electro Sur Medio SAA at Ica and Nazca and Allied Workers will be able to bargain collectively.*

Case No. 2466 (Thailand)

153. The Committee last examined this case, which concerns acts of anti-union discrimination – including dismissal, threats of termination to pressure employees to resign from the union, and other acts intended to frustrate collective bargaining – at its March 2007 meeting. On that occasion, the Committee requested the Government to take steps to ensure the reinstatement of the four dismissed union officials of Thai Industrial Gases Labour Union, with the payment of back wages, as well as to ensure that those employees who had resigned from the union may resume their membership in the union free of the threat of dismissals or any other form of reprisal. Observing that the employer concerned had appealed the 14 March 2006 decision of the Central Labour Court, which upheld Order No. 54-55/2006 of the Labour Relations Committee finding that the union President and Treasurer had been unfairly dismissed, the Committee also requested the Government to ensure the reinstatement of the two union officials and to transmit a copy of the Supreme Court judgement as soon as it was handed down [see 344th Report, paras 1322–1332].

154. In a communication dated 21 May 2007, the Government states that the employer's appeal of the 14 March 2006 Central Labour Court decision was still pending before the Supreme Court. As the schedule of the proceedings remained at the Supreme Court's discretion, moreover, no date for the rendering of the Court's judgement could be specified.

155. *The Committee takes note of the Government's indication concerning the pending Supreme Court decision and once again requests the Government to transmit a copy of the Court's judgement as soon as it is handed down. Observing that no information has been provided with respect to its other previous recommendations, the Committee recalls that justice delayed is justice denied and once again requests the Government, without delay, to secure the reinstatement with backpay of the dismissed union officials and ensure that those employees who had resigned from the union may resume their membership in the union free of the threat of dismissals or any other form of reprisal. The Committee requests to be kept informed of developments in this regard.*

Case No. 2388 (Ukraine)

156. The Committee last examined this case, concerning allegations of interference by the Ukrainian authorities and employers of various enterprises in trade union internal affairs, dismissals, intimidation, harassment and physical assaults on trade union activists and

members, denial of facilities for workers' representatives and attempts to dissolve trade unions, at its March 2007 meeting [see 344th Report, paras 217–233]. On that occasion, it requested the Government to:

- indicate whether appropriate compensation was paid to those trade unions of the Western Donbass Association of the Independent Trade Union of Miners (NPGU), which suffered material damage due to the illegal search on 12 November 2002 (paragraph 224);

- continue keeping it informed of the developments regarding investigations of cases concerning allegations of physical assaults on Mr Kalyuzhny and Mr Volynets and to transmit information as to the inquiries into the allegations of physical assaults on Mr Shtulman and Mr Fomenko (paragraph 225);

- ensure that trade union dues transferred during 2002–03 at the "Brodecke" and "Brodecke sugar refinery plant" enterprises were duly paid to the unions affiliated to the Federation of Trade Unions of Ukraine (FPU) (paragraph 226);

- provide information on the reasons for the dissolution of the All-Ukrainian Union of Football Players by an order of 20 August 2000 of the Ministry of Justice (complainant organizations were also requested to provide this information) (paragraph 227);

- take the necessary measures so as to ensure that the trade union at the "Azovstal" enterprise, the registration of which was cancelled for unlawful use of the enterprise's name in the title of the union, is re-registered (paragraph 228);

- indicate whether the Federation of Free Trade Unions of Lvov Railways is presently registered (paragraph 229);

- provide further information on negotiation of a collective agreement at the Ilyichevsk Maritime Commercial Port (paragraph 230);

- provide information on the case of appeal filed by the enterprise trade union to contest the findings of two inspections conducted at the "Ilyich" metallurgical enterprise concerning the alleged violations of trade union rights and to examine further the allegations of anti-union campaign at the "Marganetsk ore mining and processing" enterprise with the participation of the union concerned (paragraph 231).

The Committee further noted the new allegations submitted by the Confederation of Free Trade Unions of Ukraine (CFTUU) and encouraged the complainant and the Government to examine the new allegations, as well as some of the outstanding matters, where possible through the use of tripartite commissions. The Committee noted the complainants' lack of confidence in national procedures and therefore firmly encouraged the Government and the social partners to review the current functioning of national mechanisms so as to guarantee respect for freedom of association in practice, in a manner which has the full confidence of all parties concerned.

157. In its communications dated 15 February and 11 June 2007, the Government provides its observations with regard to the Committee's following recommendations:

– Paragraph 225: (1) Further to the information it had previously provided with regard to the physical assault on Mr Volynets, the Government indicates that following investigation, this case was closed pursuant to section 6(1) of the Code of Penal Procedure (absence of an offence). This decision by the Darnitsky District Department of the Main Directorate of the Ministry of Internal Affairs of Ukraine

(GUMVD) in Kiev was taken in agreement with the Darnitsky District Public Prosecutor's Office on 19 December 2006. (2) Concerning the allegation of assault on Mr Kalyuzhny and Mr Fomenko, criminal proceedings under section 296(2) of the Penal Code (act of hooliganism committed by a group) were instituted and investigations had been carried out. To date, the perpetrators have not been identified, despite all measures taken to that effect. The proceedings in these criminal cases were closed in accordance with section 206(3) of the Code of Penal Procedure on grounds that the perpetrators of the crime could not be identified. (3) Finally, with regard to Mr Shtulman, the Government indicates that, on 3 July 2001, Mr Shtulman addressed the Shakhtyorsk District Department of the GUMVD alleging that, on 2 July 2001 at about 2 a.m., three unidentified men forced him and his acquaintance into a car. They spent about three to five minutes threatening them with physical violence and demanded that they give up their trade union activity. Afterwards they let them out and drove off in an unknown direction. Based on the results of the inquiry carried out on 13 July 2001, an order refusing to institute criminal proceedings in accordance with section 6(2) of the Code of Penal Procedure (absence of an offence) was issued by the Shakhtyorsk District Department.

– Paragraph 226: The territorial state labour inspectorate in Vinnitsa region is unable to carry out an inquiry into the allegation of non-payment of trade union dues, due to the absence of relevant documents at the enterprise, since the time limit for keeping them on file has expired. During a conversation with the Chairperson of the joint trade union committee of the "Brodecke" and "Brodecke sugar refinery plant" enterprises, Mr V.M. Burtsev, it was established that he did not know about the arrears in trade union dues for the years 2002–03, since he has been the Chairperson since 2005.

– Paragraph 227: The All-Ukrainian National Union of Football Players was registered by the Ministry of Justice of Ukraine on 20 March 2000. On 25 November 2003, the Kiev Appellate Economic Court declared invalid the by-laws and the certificate of registration of the union and instructed the Directorate of Legalization of Citizens' Associations of the Ministry of Justice to strike it from the register of citizens' associations. On 16 March 2004, the Higher Economic Court upheld the decision of the Kiev Appellate Economic Court. Given that the Supreme Court of Ukraine, by its decision of 17 June 2004, refused to open cassational proceedings to review the decision of the Higher Economic Court, the Ministry of Justice cancelled the registration of the All-Ukrainian National Union of Football Players on 15 September 2004.

– Paragraph 228: The independent trade union of the "Azovstal" enterprise has not taken any initiative with regard to its re-registration.

– Paragraph 229: The Federation of Free Trade Unions of Lvov Railways was legalized by the Main Directorate of Justice of Lvov region on 7 April 2000.

– Paragraph 230: The labour and social relations at the Ilyichevsk Maritime Commercial Port (IMCP) are governed by the collective agreement concluded between the port management and the workforce for 2001–04. The agreement was amended and supplemented on 16 August 2002, 17 November 2003, 9 July 2004, 24 June 2005 and 23 June 2006. All of the amendments were approved by the workforce conferences and registered in the Labour and Social Protection Directorate of Ilyichevsk. At the initiative of the previous director of the IMCP, in June 2006, the parties set up a working group for collective bargaining purposes. No bargaining is currently taking place between the owner and the five trade unions. No complaints have been received by the territorial state labour inspectorate in Odessa region from the representatives of the trade unions active at the IMCP concerning the conclusion of a new collective agreement.

– Paragraph 231: (1) "Marganetsk ore mining and processing" enterprise. According to the information provided by the State Department for Supervision of Compliance with Labour Legislation, an inspection was carried out at the enterprise by the territorial state labour inspectorate of Dnepropetrovsk region, with the participation of a specialist from the Labour and Social Protection Directorate of the Marganetsk Municipal Executive Committee, in the presence of the Chairperson of the primary trade union of the NPGU at the "Marganetsk ore mining and processing" enterprise, a former chairperson of the trade union committee of the NPGU at the enterprise (re-elected by majority vote at the trade union conference on 9 May 2007), a representative of the primary trade union of the Metallurgists and Miners of Ukraine at the enterprise (PPOMGU) and representatives of the enterprise. According to the findings of the inspection, two primary-level trade unions active at the enterprise, the NPGU and the PPOMGU, represent 128 and 6,596 workers, respectively. The collective agreement was found to be in conformity with the labour legislation in force. The inspection found no instances of pressure on members of the active primary trade unions or anti-union campaign by the management. (2) "Ilyich" metallurgical enterprise. On 29 January 2007, the Donetsk Regional Economic Court decided to close the proceedings in this case since the dispute did not fall within the competence of the economic court. The decision was upheld by decision of 14 March 2007 of the Donetsk Appellate Economic Court. Disagreeing with the abovementioned court decisions, the union filed a cassational appeal with the Higher Economic Court of Ukraine. That court is scheduled to examine the appeal on 12 June 2007.

158. With regard to the allegations appearing in paragraph 218, the Government provides the following additional information:

– "Lesnaya", "Zarechenskaya" and "Vizeiskaya" mines of the "Lvovugol" company: In its communication dated 15 February 2007, the Government indicates that the confiscated documents were returned to the trade union committee of the NPGU at the "Lesnaya" mine. The search of the premises of the trade union committee at the "Vizeiskaya" mine and confiscation of the NPGU's documents were in accordance with the search warrant sanctioned by the public prosecutor of Chervonograd, pursuant to section 177 of the Code of Criminal Procedure. In its subsequent communication, dated 11 June 2007, the Government indicates that, on 27 January 2006, the Sokalsky District Department of the GUMVD in Lvov region instituted criminal proceedings with regard to the allegations of misuse of mine funds by the officials of the "Lvovugol" state holding company. Under these criminal proceedings, investigations into payments made by the "Lesnaya", "Zarechenskaya" and "Vizeiskaya" mines were carried out. During the pre-trial investigation, some financial and economic documents and records were confiscated from the abovementioned mines as evidence in the criminal proceedings. However, this case does not concern trade union activities and trade unions at these mines are not under investigation. Therefore, no trade union documents were confiscated from the unions.

– Kherson port: An inspection carried out by the Kherson regional state labour inspectorate into the allegations of pressure exerted on members of the primary trade union organization of the All-Ukrainian Trade Union (AUTU) "Defence of Justice" by the administration of the Kherson Commercial Seaport established that the only trade union active at the port is a primary trade union affiliated to the Trade Union of Maritime Transport Workers of Ukraine. There is no evidence of existence and functioning in the port of the AUTU "Defence of Justice" primary trade union. The Kherson regional state labour inspectorate has received no complaints from the workforce or the trade union committee.

– Kharkiv State University of Arts: (1) The Kharkov regional state labour inspectorate established that the collective agreement for 2004–09, between the university's administration and the Trade Union of Cultural Workers of Ukraine, was approved by the workers' general assembly and registered in the executive committee of the Dzerzhinsk district council on 11 February 2004. On 27 February 2006, the chairperson of the primary trade union organization affiliated to the AUTU "Defence of Justice" at Kharkiv State University of Arts addressed a letter to the rector of the university requesting to conduct collective bargaining for the conclusion of a collective agreement. In her reply, the rector of the university suggested that the chairperson of the primary trade union organization of the AUTU "Defence of Justice" contact the Trade Union of Cultural Workers of Ukraine with a view to setting up a unified representative body for conducting negotiations to revise the collective agreement. In the course of the verification, no documents came to light that would confirm that the chairperson of the primary trade union organization of the AUTU "Defence of Justice" had contacted the chairperson of the Trade Union of Cultural Workers of Ukraine. (2) With regard to the payment of trade union dues, the Kharkov regional state labour inspectorate has ascertained that no written statements addressed to the rector had been received from the members of the primary trade union organization of the AUTU "Defence of Justice" requesting the payment of trade union dues to this trade union, despite the fact that by a letter of 6 September 2006, the Chairperson of the AUTU "Defence of Justice" at Kharkiv State University of Arts, had been informed that a written request of the worker, addressed to the rector of the university was needed for the deduction and transfer of trade union dues.

– "Snejnoeatratsit" state enterprise: With regard to the allegations of dismissal of a trade union member without a prior approval of the union, the Donetsk regional state labour inspectorate established that Mr D.V. Kotovsky was employed by the "Zarya" subdivision of the "Snejnoeatratsit" state enterprise from 16 November 2005. He was dismissed as of 1 March 2006 by an order of 18 May 2006, in accordance with section 40(4) of the Labour Code for absenteeism. An investigation into the matter established that on 28 February 2006, Mr Kotovsky, a member of the Trade Union of Workers of the Coalmining Industry (PRUP), submitted an application to join the Independent Trade Union of the Coalmining Industry. In accordance with the requirements of section 43 of the Labour Code, if a worker is a member of more than one primary trade union organization, consent for his dismissal is given by the elected body of the trade union to which the employer addresses the request for consent. Mr Kotovsky was informed in writing of the date of the PRUP committee meeting but failed to attend it. A commission comprising the head of the section where Mr Kotovsky used to be employed and representatives of the PRUP trade union went to his place of residence to ascertain the reason for his absence from work. The commission established that Mr Kotovsky was not living at home and his neighbours had not been informed of his whereabouts. Thereafter, the PRUP gave its consent for his dismissal on 1 March 2006.

– The Mariupol Commercial Seaport: The Donetsk regional state labour inspectorate has established that the primary trade union of the AUTU "Defence of Justice" of the Mariupol Commercial Seaport was registered in Kiev on 12 April 2006, with a membership of four persons. The Chairperson of the trade union died in a car accident in the summer of 2006; another trade union member was dismissed from the enterprise for absenteeism under section 40(4) of the Labour Code and his suit for reinstatement is currently being examined in a judicial procedure; two other members left the trade union voluntarily. Given that, currently, there are no members of the primary trade union organization of the AUTU "Defence of Justice" at the Mariupol Commercial Seaport, trade union dues are not being paid. According to the port administration, no other requests concerning payment of trade union dues to the

primary trade union organization of the AUTU "Defence of Justice" have been received.

– "Mariupol Ilyich Metallurgical Complex": With regard to the recognition of the trade union and the provision of facilities, the Donetsk regional state labour inspectorate established that, in accordance with the report of the constituent assembly of 1 February 2005, the primary trade union organization of the AUTU "Defence of Justice" was established in the plant with a membership of six persons. The organization was registered on 13 March 2005. On 21 March 2005, its Chairperson, Mr Simonik, informed the management of the enterprise of the registration of the trade union and, in accordance with section 12 of the Law on Trade Unions, requested that the trade union be provided with premises and the necessary equipment, communications facilities and security services. His request was denied. In accordance with the collective agreement in force, the management of the plant provided the primary trade union of the "Mariupol Ilyich Metallurgical Complex" with a two-floors trade union building, lighting, means of communication, heating and security services. The investigation revealed that Mr Simonik had not contacted the chairperson of the primary trade union of the "Mariupol Ilyich Metallurgical Complex" regarding the provision of premises in the trade union building to the primary trade union organization of the AUTU "Defence of Justice".

– "Krimsky Titan" enterprise: A unified representative body to draft collective agreement for 2007–09, which included the chairperson of the primary trade union organization of the NPGU, was set up on 20 December 2006.

– "VK Dnepropetrovsk enterprise". The Dnepropetrovsk regional state labour inspectorate established that Ms Pribudko was dismissed on 21 July 2006 pursuant to section 41(2) of the Labour Code for absenteeism. Civil proceedings on her reinstatement are currently pending before the Babushkinsk district court in Dnepropetrovsk.

– Sosnitsa city boarding school: According to the chief administration of labour and social protection of the Chernigov regional state administration, there was no pressure exercised by the institution on the members of the primary organization of the Free Trade Union of Education and Science of Ukraine. The organization ceased its activity after all trade union members left the union, as attested by their statements, for the reasons of absence of formal registration of the union, non-payment of dues by trade union members and mistrust in the organizational activities of its leader. However, the district organization of the Free Trade Union of Education and Science of Ukraine is still active. The Government further indicates that the allegations of threats by the director of the school to use force against Ms L.N. Batog, the Head of the district organization of the Free Trade Union of Education and Science of Ukraine were not confirmed and therefore, criminal proceedings were not instituted. Ms Batog terminated the contract of employment, and, on 25 December 2006, ceased her employment at the boarding school in accordance with section 36(1) of the Labour Code (by mutual agreement).

– Kiev Metro: (1) The Kiev regional state labour inspectorate has conducted an investigation into the allegation of refusal to set up a unified representative body for the conclusion of a collective agreement between the management and the trade union organizations. It has been established that, on 8 December 2004, at the general assembly of the representatives of the Trade Union of Railway and Transport Construction Workers of Ukraine and the Free Trade Union of Workers of the Kiev Metro, a unified representative body was set up for the conclusion of a collective agreement for 2005–06. The concluded agreement is currently in force. The investigation further revealed that, in accordance with an order of 5 July 2006 on

changes in the organization of work of engine depot operators, a system of averaging of working hours was established. However, this order was issued without the agreement of the executive committee of the free trade union, in violation of section 61 of the Labour Code. An injunction was therefore issued ordering the management of the enterprise to eliminate the said violation of labour legislation. According to the Kiev city state administration, appropriate action was taken with the management of the enterprise and the trade union organizations. A meeting was held with the acting head of the municipal enterprise Kievsky Metropoliten, the managers of the structural subdivisions, the Chairperson of the United Trade Union Organization of the Kiev Metro and the Chairperson of the Free Trade Union of Workers of the Kiev Metro to discuss the social and labour relations at the enterprise. With regard to the demand of the Chairperson of the Free Trade Union of Workers of the Kiev Metro (which comprises less than 3 per cent of the workforce) to sign a collective agreement, the Metro management does not have the right to decide on this issue, since the authority to sign on behalf of the workforce was granted by the workers' conference to the Chairperson of the United Trade Union Organization. Pursuant to section 12 of the Labour Code and section 37 of the Law on Trade Unions, if more than one primary trade union organization has been established in an enterprise, such organizations should, based on the principle of proportional representation and at the initiative of any of them, set up a unified representative body for the conclusion of a collective agreement. In accordance with the legislation in force, the decision to establish a representative body is taken by the trade unions independently. Any interference by the Government, employers or their associations in the activities of trade unions or their organizations or associations is prohibited (section 12 of the Law on Trade Unions). (2) With regard to the allegation of anti-union discrimination suffered by Ms Ivanova-Butovich, who was allegedly subjected to a heavier workload than other operators, the Government informs that Ms Ivanova-Butovich has worked as an operator of an engine depot since 1987. She was informed of her duties at the time of her recruitment. She has performed the same work for a long period of time. After the creation of a new structural subdivision and the separation of the department of rolling stock and the workers of the engine depot, the responsibilities of the Metro engine depot operators did not change, the amount of work did not increase and their workload did not exceed 70 per cent (as attested by the relevant verifications). In order to achieve an even distribution of the responsibilities of operators of all Metro's engine depots, the decision was taken to create equal working conditions. The management of the enterprise considers that Ms Ivanova-Butovich should carry out her work in accordance with the contract of employment and the description of her duties.

– Railway transport "Ukrzaliuznucia" (Ukrainian railways) and Lvov Railway: (1) The Government states that trade unions in the railway transport sector have equal rights with regard to representation and defence of the rights and interests of their members. (2) With regard to the allegation that the management of the Kozyatin directorate of railway refuses to provide free trade unions with an office space, the Government indicates that premises at Berdichev station were proposed for use by the CFTUU primary trade union. However, in his letter dated 23 November 2006, the Chairperson of the trade union declined the offer. The management then considered providing the premises in the administrative building of the Kozyatin branch of the carriage division of Kiev-Passazhirsky station, which could be made in the second half of 2007, after the completion of certain administrative formalities. Currently, premises in the assembly hall of the board of directors are provided for conducting meetings of the members of the free trade union. (3) Allegations of anti-union dismissal of workers of the structural subdivisions of the railway have repeatedly been examined by specialists of Ukrainian railways and by the relevant railway services. Mr S.S. Smereka, passenger carriage conductor of the Uzhgorod passenger carriage division

of the Lvov Railway, was dismissed from work on 31 August 2006 on the basis of section 40(4) of the Labour Code for a long-term absence without valid reason. Having examined Mr Smereka's suit for reinstatement, the Uzhgorod municipal court and the district court of the Zakarpattya region ruled in favour of the Uzhgorod passenger carriage division of the Lvov Railway. The CFTUU of the Lvov Railway filed a suit for Mr Smereka's reinstatement and the hearing was set for 15 March 2007. (4) With regard to the participation of the Chairperson of the Association of Free Trade Unions of Railway Workers, Mr G.M. Nedviga, in the senior management meetings of the Ukrainian railways, the Government explains that the senior management meetings in the state administration of the railway transport is one of the forms of management aimed at organization and supervision of the transportation process and the economic activity of railway transportation in Ukraine. Therefore, participation of the chairperson of a trade union in senior management meetings is not obligatory.

159. The Government states that the Collegium of the Ministry of Labour and Social Policy held a session to discuss the observance of Convention No. 87 in Ukraine. The Labour and Social Policy Committee of the Supreme Council also had a meeting to discuss the observance of the rights of trade unions and employers' organizations in Ukraine. The Government indicates that every complaint by the social partners is carefully examined by an independent commission, composed of the representatives of the state inspection bodies and social partners, set up to that end. Moreover, the Ministry of Labour and Social Policy has introduced a practice of meeting with the social partners to discuss such matters. Between 2006 and 2007, three working meetings were held at which representatives of the Government and trade unions discussed, among other topics, compliance of the legislative provisions with international standards on freedom of association and protection of the right to organize. The CFTUU and the FPU, the largest trade union, have given a positive assessment of the Government's work to address these issues. The Government understands that such events are a key element in the set of legislative, organizational, legal and institutional measures carried out by the Government with a view to creating a conducive environment for the free development of trade unions and employers' organizations in accordance with the provisions of ILO Conventions.

160. By a Communication dated 24 October 2007, the CFTUU transmits its comments on the measures taken by the Government to implement the Committee's recommendations and alleges further violations of trade union rights.

161. *The Committee notes with interest the efforts made by the Government to resolve the pending issues brought to the attention of the Committee through active participation in national tripartite mechanisms set up to examine complaints of the social partners. It further notes with interest the constructive dialogue, which appears to have been taking place between the Government and the two largest trade union centres in respect of freedom of association and the protection of the right to organize.*

162. *The Committee notes the detailed information provided by the Government on the implementation of the Committee's previous recommendations. The Committee regrets that no information was provided in respect of the Committee's previous request to indicate whether appropriate compensation was paid to those trade unions of the Western Donbass Association of the NPGU, which suffered material damage due to the illegal search on 12 November 2002. It therefore once again requests the Government to provide its observations in this regard. With regard to its previous request to provide information on the reasons for the dissolution of the All-Ukrainian Union of Football Players, the Committee regrets that the Government did not indicate the reason behind the initial decision of the Kiev Appellate Economic Court to declare invalid the by-laws of the All-Ukrainian National Union of Football Players. The Committee requests the Government to*

transmit the relevant court decisions concerning the case of the All-Ukrainian National Union of Football Players. The Committee further requests the Government to keep it informed of the decision reached by the Higher Economic Court in the case filed by the enterprise trade union to contest the findings of two inspections conducted at the "Ilyich" metallurgical enterprise concerning the alleged violations of trade union rights and to transmit the corresponding judicial decision.

163. *The Committee notes the Government's indication that no primary trade union of the AUTU "Defence of Justice" exists in Kherson Port. The Committee recalls the complainant's allegation of an anti-union campaign aimed at preventing the establishment of a free and independent trade union at the port. In this respect, the Committee recalls that anti-union tactics aimed at preventing the establishment of workers organizations are contrary to Article 2 of Convention No. 98, which provides that workers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning and administration. The Committee trusts that the Government will ensure the application of this principle.*

164. *The Committee recalls the complainant's allegation of preferential treatment given by the management of the Ukrainian railways enterprise to the old "state" trade union by inviting its leaders to the meetings with the management and not extending the same privilege to the CFTUU-affiliated unions. While noting the Government's statement that participation in the management meetings is not obligatory, the Committee expresses a note of caution that by extending an invitation to participate in the meetings with the enterprise management to one organization and not to another, may be an informal way of showing favouritism to one organization and thereby influencing the trade union membership of workers. The Committee requests the Government to take the necessary measures so as to ensure that the management of the Ukrainian railways refrains from any such favouritism.*

165. *The Committee notes the information provided by the Government in respect of the dismissal of a trade union member of the AUTU "Defence of Justice" from the Mariupol Commercial Seaport, as well as the dismissals of the founder of the CFTUU primary trade union at the "VK Dnepropetrovsk enterprise" and the Chairperson the CFTUU primary trade union at the Lvov Railway. Noting that judicial proceedings are currently pending in respect of the abovementioned cases, the Committee requests the Government to keep it informed of their outcomes once the final decisions have been handed down.*

166. *The Committee notes the information transmitted by the CFTUU and requests the Government to transmit its observations thereon.*

Case No. 2088 (Bolivarian Republic of Venezuela)

167. At its November 2006 meeting, the Committee took note of the lengthy and complex process that has unfolded since the dismissal on 10 January 2001 of the trade union leader of the judicial sector, Mr Oscar Romero Machado. In this regard, bearing in mind that the labour inspectorate initially ordered his reinstatement (5 February 2002) and that, in March 2003, the Committee requested the Government to mediate between the parties with a view to bringing about his reinstatement, the Committee requested the Government to take measures to ensure that the competent authorities examine the possibility of reinstating Mr Romero Machado prior to a definitive ruling by the judicial authority. The Committee also requested the Government to keep it informed of the final ruling handed down in relation to this case [see 343rd Report, para. 206]. Furthermore, the Committee requested the Government to provide it with information on the ruling handed down concerning the discharge of Ms Gladys Judith Sánchez from her secretarial post at the First Court of the municipalities of Libertador and Santos Marquina (according to the Government while a

"discharge" has the same effect as a dismissal, they take different forms); this discharge took place on 14 September 2005. Moreover, the Committee requested the Government to provide the appeal ruling declaring the appeal lodged by members of the National Organized Single Trade Union of Court and Council of the Judicature Workers (SUONTRAJ) against the ruling (with regard to which the Government provided information) concerning the conduct of SUONTRAJ members (consisting of the blocking of free access to the courts both for members of the public and officials of the judicial authority) to be unfounded. The Committee also requested the Government to send it the text of a circular of the Executive Directorate of the Judiciary dated 13 September 2005 which, according to the allegations, limited the exercise of trade union rights. The Committee requested the Government to inform it as to whether a collective agreement had finally been concluded in the judicial sector with the trade union SUONTRAJ. Lastly, the Committee requested the Government to provide information in relation to the alleged acts of anti-union persecution against the trade union official Mr Mario Naspe Rudas. Furthermore, given the drawn-out nature of certain court proceedings for acts of anti-union discrimination, the Committee underlines the principles whereby "Cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned." [See 343rd Report, paras 206–207.]

168. In its communications of 3 and 9 May 2007, the Government states in relation to the recommendation concerning the dismissal of Mr Oscar Romero Machado that section 2 of the Constitution establishes that the Bolivarian Republic of Venezuela is constituted as a democratic and social state subject to the rule of law and justice, and holds up as supreme guiding principles of its legal system the values of justice, democracy and, in general, the pre-eminence of human rights . Since the birth of the government of laws and thus the origin of the Constitution as a fundamental standard within Kelsenian theory, citizens have explored, and agreed on, the need for the separation of powers, this being the reason why the independence of the public powers runs right through the Constitution. Given the above, it is clear why the Ministry of Labour and Social Security, as a part of the cabinet of the national executive power, coordinates the decisions and activities of the labour inspectorates, which are constituted as administrative bodies. Despite the above, the Government sends the document through which the First Administrative Disputes Court declared itself incompetent to hear the preventative immunity *(amparo)* action brought by the citizen Mr Oscar Rafael Romero Machado, and transferred the file to the Higher Civil and Administrative Court of the Judicial District of the Capital Region for decision.

169. The Government sends the appeal ruling concerning supposed anti-trade union practices against trade union members of SUONTRAJ.

170. As to the circular requested by the Committee on Freedom of Association, the Government sends the text. The Government states that Article 8 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), states that "In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land." In this regard it should be pointed out that although freedom of association is recognized under section 95 of the Constitution of the Bolivarian Republic of Venezuela, it must not be applied to the detriment of the steps which must be followed when exercising the right to strike in line with the terms of the Organic Labour Act.

171. Furthermore, the Government attaches a copy of the recognition agreement concerning the collective agreement covering employees of the Executive Directorate of the Judiciary (2005–07).

172. As to the discharge of Ms Gladys Judith Sánchez, the Government states that in file No. 3935 of the First Court of the municipality of Mérida, dated 27 October 2006, the appeal for annulment brought in the dispute involving the state employee (currently at the stage of the notification of the parties) was declared unfounded.

173. As to the alleged acts of anti-trade union persecution against the trade union leader Mr Mario Naspe Rudas, the Government provides letter No. 404/2005, dated 7 September 2005, through which, in turn, it provides communication No. 455/1004, issued by the Executive Directorate of the Judiciary, analysing the case. Despite the above, the Government states that it is common knowledge that the citizen Mr Mario Naspe Rudas is registered with the Judicial District of Anzoátegui State, exercising the tasks inherent to his post alongside his trade union activities.

174. *As to the discharge, which has the same effect as a dismissal, of the trade unionist Ms Gladys Judith Sánchez in September 2005, the Committee notes that the Government states that the appeal for annulment brought by the interested party was declared unfounded. The Committee requests the Government to provide a copy of the ruling handed down.*

175. *The Committee notes with interest the 2005–07 collective agreement concluded between the Executive Directorate of the Judiciary and the complainant trade union organization, SUONTRAJ. The Committee further notes the circular dated 13 September 2005, reproduced below:*

> *Pursuant to instructions issued by judge Dr. Luis Velásquez Alvaray of the Executive Directorate of the Judiciary, all presiding judges of the criminal and civil circuits, chief judges and national and regional DAR directors are informed that, on 16 September 2005, the various trade unions of workers of the Supreme Court of Justice, SUONTRAJ, the National Trade Union of Court Workers (SINTRAT), the Unitary Trade Union of Public Employees (SUNET), SINATRAJ, etc, intend to hold a work stoppage, involving activities with which you are all very familiar (blocking of main access points to judicial offices, by the use of padlocks and chains; the placing of mattresses in front of the courts in order to prevent the free passage of workers, the use of fireworks to create unrest and confusion, etc); therefore your presence is required in the early hours of the morning in order to:*
>
> – *avoid becoming the object of physical or verbal aggression on the part of certain overexcited individuals;*
>
> – *collaborate with the internal and external authorities should high level cooperation be required to resolve any problems which might arise;*
>
> – *keep the General Coordination Office of the Executive Directorate of the Judiciary informed of the situation;*
>
> – *maintain close coordination with security personnel in order to ensure freedom of movement at the entrance, so that officials arriving at work may enter the premises without too much trouble;*
>
> – *coordinate if necessary on the day, the presence of State security services;*
>
> – *order all office managers to provide a list of the officials who fail to turn up for work or to perform their duties without any justification, with a view to the application in the future of those provisions which may be applicable in line with the Administrative Service Act and the Organic Labour Act.*

176. *In this regard, the Committee wishes to refer to a recent case [see 344th Report, Case No. 2461 (Argentina), para. 313] in which it recalled that it has on a number of occasions*

*emphasized that officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions, such as its suspension or even prohibition [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 578] and considers that the restrictions on the exercise of the right to strike referred to by the Government are not contrary to the principles of freedom of association in the judicial sector.*

177. *As to the dismissal of the trade union leader Mr Oscar Romero Machado in January 2001, the Committee notes that according to the Government's statements, in light of the separation of powers it cannot ensure that the individual in question is reinstated. The Committee notes that according to the Government, the First Administrative Disputes Court declared itself incompetent to hear the preventative immunity* (amparo) *action brought by the interested party, and transferred the file to the Higher Civil and Administrative Court of the Judicial District of the Capital Region. The Committee deplores the fact that no final ruling has been handed down concerning this trade union leader's situation despite the fact that he was dismissed in 2000. The Committee requests the Government to inform it whether this trade union leader has had recourse to the Judicial Authority for Civil and Administrative Disputes, as well as to transmit to his employer the previous recommendation made by the Committee requesting that he be reinstated at least until a definitive ruling has been handed down.*

178. *As to the alleged acts of anti-trade union persecution against the trade union leader Mr Mario Naspe Rudas (initiation of a disciplinary dismissal procedure), the Committee notes that, according to the Government, the interested party currently exercises the tasks inherent to his post alongside his trade union activities in the Judicial District of Anzoátegui State. The Committee requests the Government to confirm that there are no disciplinary procedures ongoing against this trade union leader.*

Case No. 2160 (Bolivarian Republic of Venezuela)

179. At its meeting in June 2006, the Committee requested the Government to communicate the ruling handed down with respect to the dismissal of trade unionists Mr Guido Siviria and Mr Orlando Acuña, and to indicate whether the trade unionist Mr Otiel Montero had initiated legal action in connection with his dismissal (these persons had been dismissed for establishing the Trade Union of Revolutionary Workers of the New Millennium and had been working in the INLACA Corporation) [see 336th Report, para. 137]. The Committee recalled that the allegations date back to 2001 and stressed that justice delayed is justice denied. The Committee trusts that the judicial authorities will hand down their ruling in the near future [see 342nd Report, para. 178].

180. In its communications dated 3 and 9 May 2007, the Government states that, on 26 September 2006, the workers, Mr Guido Siviria and Mr Orlando Acuña, requested that a ruling be handed down on the substance of the case. As the case is currently being heard at the last instance, the Government will provide information on the judicial decision.

181. *The Committee takes note of this information. The Committee once again requests the Government to indicate whether trade unionist Mr Otiel Montero has initiated legal action in connection with his dismissal. The Committee reiterates its previous recommendations in which it stressed that the allegations date back to 2001 and that justice delayed is justice denied. The Committee firmly trusts once more that the judicial authorities will hand down their ruling on the dismissal of the trade unionists Mr Guido Siviria and Mr Orlando Acuña in the very near future and requests the Government to communicate the ruling as soon as it is handed down.*

* * *

182. 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
1914 (Philippines)	June 1998	March 2002
1962 (Colombia)	–	November 2006
1991 (Japan)	November 2000	November 2006
2017 (Guatemala)	March 2002	June 2007
2048 (Morocco)	November 2000	June 2007
2050 (Guatemala)	March 2002	June 2007
2086 (Paraguay)	June 2002	June 2007
2087 (Uruguay)	March 2005	June 2007
2114 (Japan)	June 2002	March 2007
2139 (Japan)	June 2002	June 2007
2169 (Pakistan)	June 2003	March 2007
2176 (Japan)	November 2002	June 2007
2188 (Bangladesh)	November 2002	June 2007
2242 (Pakistan)	November 2003	March 2007
2256 (Argentina)	June 2004	March 2007
2259 (Guatemala)	March 2006	June 2007
2273 (Pakistan)	November 2004	March 2007
2279 (Peru)	June 2006	March 2007
2297 (Colombia)	June 2004	November 2006
2304 (Japan)	November 2004	June 2007
2328 (Zimbabwe)	March 2005	March 2007
2330 (Honduras)	November 2004	March 2007
2351 (Turkey)	March 2006	March 2007
2363 (Colombia)	November 2005	March 2007
2365 (Zimbabwe)	March 2007	–
2372 (Panama)	June 2007	–
2399 (Pakistan)	November 2005	March 2007
2402 (Bangladesh)	November 2005	June 2007
2407 (Benin)	November 2005	March 2007
2414 (Argentina)	March 2006	June 2007
2435 (El Salvador)	June 2007	–
2437 (United Kingdom)	March 2007	–
2439 (Cameroon)	March 2006	November 2006
2447 (Malta)	June 2006	–
2455 (Morocco)	June 2006	June 2007
2456 (Argentina)	March 2007	–
2458 (Argentina)	March 2007	–
2459 (Argentina)	June 2007	–
2460 (United States)	March 2007	–
2464 (Barbados)	March 2007	–
2467 (Canada)	March 2007	–

Case	Last examination on the merits	Last follow-up examination
2468 (Cambodia)	March 2007	–
2471 (Djibouti)	March 2007	–
2477 (Argentina)	June 2007	–
2479 (Mexico)	March 2007	–
2480 (Colombia)	June 2007	–
2482 (Guatemala)	June 2007	–
2485 (Argentina)	June 2007	–
2488 (Philippines)	June 2007	–
2491 (Benin)	March 2007	–
2495 (Costa Rica)	March 2007	–
2500 (Botswana)	June 2007	–
2511 (Costa Rica)	June 2007	–
2523 (Brazil)	June 2007	–

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

184. In addition, the Committee has just received information concerning the follow-up of Cases Nos 1890 (India), 2006 (Pakistan), 2048 (Morocco), 2171 (Sweden), 2214 (El Salvador), 2229 (Pakistan), 2234 (Mexico), 2236 (Indonesia), 2249 (Bolivarian Republic of Venezuela), 2252 (Philippines), 2275 (Nicaragua), 2285 (Peru), 2291 (Poland), 2298 (Guatemala), 2301 (Malaysia), 2336 (Indonesia), 2338 (Mexico), 2354 (Nicaragua), 2368 (El Salvador), 2371 (Bangladesh), 2373 (Argentina), 2380 (Sri Lanka), 2382 (Cameroon), 2383 (United Kingdom), 2386 (Peru), 2395 (Poland), 2413 (Guatemala), 2419 (Sri Lanka), 2423 (El Salvador), 2441 (Indonesia), 2451 (Indonesia), 2469 (Colombia), 2473 (United Kingdom), 2474 (Poland), 2475 (France), 2481 (Colombia), 2483 (Dominican Republic), 2487 (El Salvador), 2506 (Greece), 2510 (Panama), 2514 (El Salvador), 2521 (Gabon), 2525 (Montenegro) and 2537 (Turkey), which it will examine at its next meeting.

CASE NO. 2499

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

Complaint against the Government of Argentina presented by the Union of Employees of the National Judiciary (UEJN)

Allegations: The complainant alleges that the judicial authorities of the Province of Catamarca prohibit workers in the sector from holding union meetings and that sanctions have been imposed on union officials for no valid reason

185. The complaint is contained in a communication from the Union of Employees of the National Judiciary (UEJN) of 14 June 2006.

186. The Government sent its observations in a communication dated 5 July 2007.

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

A. The complainant's allegations

188. In its communication of 14 June 2006, the UEJN alleges that the judiciary of the Province of Catamarca in the Republic of Argentina adopts measures and hands down decisions that limit, obstruct and/or prohibit various aspects of the right to organize and freedom of association. Specifically, the UEJN states that the obstruction and curtailment of freedom of association take the following forms: (1) infringement of the right of assembly: the Supreme Court of the Province of Catamarca, through its decision No. 3966 of 20 March 2006, prohibited meetings at the workplace; and (2) persecution of trade union officials: the Supreme Court has instituted unfounded legal proceedings and handed down discriminatory decisions against founding members of the union branch in that province. Different kinds of sanctions have been applied and have even included fines imposed on union officials on the basis of fictitious events.

189. The complainant adds that all these measures are adopted in a socio-economic climate marked by intense conflict brought about by delays in the payment of wages, and led to a downturn in both the private and public sectors as a result, among other factors, of the currency devaluation of January 2002. Specifically, within the judiciary, where these measures are implemented, the situation is highly conflictual because of the insufficient budget allocated to the judiciary, in addition to constant "reductions" and the inequitable management of these scarce resources. The dispute is further exacerbated by the fact that wage increases have been granted only to magistrates.

B. The Government's reply

190. In its communication of 5 July 2007, the Government states that, with regard to the prohibition on holding meetings during working hours in the buildings of the province's judiciary, the measure was taken as a result of complaints made by workers from several courts that they could not carry out their judicial activity (investigations, hearings, etc.) because the noisy demonstrations inside the buildings hindered their work. The decision in question, No. 3966, was preceded by an identical document issued by the High Court of Córdoba Province in June 2004, extraordinary agreement No. 247 dated 28 May 2004, which prompted the ILO recommendation that the right to organize "shall not impair the efficient operation of the administration or service concerned", which is why the court in this province reinstated the prohibition on holding meetings in judicial buildings; "cease holding meetings within judicial authority buildings, in accordance with the terms of the ILO recommendation, because they hinder the efficient operation of the judicial administration".

191. The Government adds that the principles of effectiveness, efficiency and uninterrupted service add a particular dimension to the organization of the justice service, because of the exclusivity of its public functions, of which it is the sole provider, and it is hence essential that they be guaranteed. Although Argentinian legislation widely recognizes workers' right of assembly, that does not mean it accepts the right of workers to be absent from the workplace during working hours to attend meetings called by the trade union to which they belong. The recognized right of workers must be interpreted in a reasonable context and bearing in mind the significance of judicial activity, because otherwise there would be a

potential risk that the whole staff could be absent from the workplace en masse at any time for the reason indicated (to attend meetings).

192. The meetings held in workplaces and during working hours by employees of this judiciary were not measures of direct action or strike. The right of the employees of this Province's state authority to strike has been adequately guaranteed. The restriction on holding assemblies in workplaces and during working hours in which they are open to the public has not been imposed to prevent measures of direct action, but only to guarantee the continuity and normal performance of judicial services, and to create suitable conditions to allow litigants and members of the public to circulate freely. Judicial operations require continuous activity (during fixed hours), because the very nature of this service guarantees all citizens the constitutional right of access to justice.

193. The Government states that this type of dispute has already been examined by the Committee, giving the example of Case No. 2223 presented by the Trade Union Association of Judicial Employees of the Province of Córdoba (AGEPJ) and the Argentine Judicial Federation (FJA) concerning a high court decision in that province, and that it is on that prior case that the high court in question this time, in the Province of Catamarca, based the decision at issue in the present complaint. The Government reiterates what it said on that occasion: "the decision taken by the High Court does not violate the provisions of ILO Convention No. 87. The restriction on holding assemblies in workplaces and during working hours in which they are open to the public has not been imposed to prevent measures of direct action, but only to guarantee continuity and normal performance of essential and necessary services and to allow litigants and members of the public to circulate freely. Judicial employees do have, and are not denied, the right to meet or to attend assemblies convened by the trade union association to which they belong, but that this must take place outside the workplace and outside working hours. The Government also ratifies the constitutional powers of the High Court of Justice to regulate how its services are performed by its employees, based on the judicial doctrine of the High Court of Justice when it upheld that the relations between provincial public employees and the Government upon which they depend are governed by the various provisions of local character that make up the appropriate administrative law."

194. With regard to the alleged legal proceedings against members of the complainant organization, the Government notes that the judicial authority in the province has reported that no such proceedings exist, nor have any been initiated. The only employee who has been sanctioned is Ms Patricia Bustamante, but the sanction was imposed on her by the secretariat of the commercial tribunal and court of first instance, for strictly work-related reasons. It adds that at the time of the sanction the union was not recognized by the court, as recognition was only obtained later, so that particular employee could hardly be described as a union official.

195. The Government states that there are currently no requests for meetings or assemblies, the pay rise was higher than that requested by the union, there are no proceedings against any unionized worker, and there has been no anti-union discrimination whatsoever since, at the time of the sanction, the sanctioned employee did not hold that office.

C. The Committee's conclusions

196. *The Committee observes that, in the present case, the complainant alleges that the judiciary of the Province of Catamarca is infringing the workers' right of assembly by prohibiting, through decision No. 3966 of 20 March 2006, the organization of meetings at the workplace, and that the Supreme Court of the province has instituted unfounded legal proceedings and handed down discriminatory decisions against founding members of the*

UEJN branch by imposing sanctions and fines on union officials on the basis of unconfirmed events.

197. *With regard to the alleged infringement of the workers' right of assembly, by prohibiting the organization of meetings at the workplace, the Committee notes the Government's statement that: (1) the measure was taken as a result of complaints made by workers from several courts that they could not carry out their judicial activity (investigations, hearings, etc.) because the noisy demonstrations inside the buildings hindered their work; (2) the principles of effectiveness, efficiency and uninterrupted service add a particular dimension to the organization of the justice service, because of the exclusivity of its public functions, of which it is the sole provider, and hence it is essential that they be guaranteed; (3) although Argentinian legislation widely recognizes workers' right of assembly, that does not mean it accepts the right of workers to be absent from the workplace during working hours to attend meetings called by the trade union to which they belong; (4) the restriction on holding assemblies in workplaces and during working hours in which they are open to the public has not been imposed to prevent measures of direct action, but only to guarantee the continuity and normal performance of judicial services, and to create suitable conditions to allow litigants and members of the public to circulate freely; (5) judicial operations require continuous activity (during fixed hours), because the very nature of this service guarantees all citizens their constitutional right of access to justice; and (6) this type of dispute has already been examined by the Committee and it is on that prior case that the High Court in the Province of Catamarca based the decision at issue in the present complaint.*

198. *The Committee observes that it has already examined similar allegations concerning judicial employees in Argentina, and accordingly refers to the conclusions formulated on that occasion, as follows [see 332nd Report, Case No. 2223, para. 246]:*

> *The Committee recalls that the right to hold meetings is essential for workers' organizations to be able to pursue their activities and that it is for employers and workers' organizations to agree on the modalities for exercising this right. The Committee further recalls that the Labour Relations (Public Service) Convention, 1978 (No. 151) – ratified by Argentina – lays down in Article 6 that "such facilities shall be afforded to the representatives of recognized public employees' organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work" and that "the granting of such facilities shall not impair the efficient operation of the administration or service concerned". In these circumstances, the Committee requests the Government to invite the parties to negotiate with a view to achieving agreement on the modalities for the exercise of the right to hold meetings, including the place for such meetings, as well as on the granting of facilities provided for under Article 6 of Convention No. 151.*

The Committee requests the Government to keep it informed of developments in this regard.

199. *With regard to the allegations that the Supreme Court of the province has instituted unfounded legal proceedings and handed down discriminatory decisions against founding members of the UEJN branch by imposing sanctions and fines on union officials on the basis of unconfirmed events, the Committee notes the Government's statement that: (1) no legal proceedings have been taken against members of the founding committee of the UEJN; (2) the only employee who has been sanctioned is Ms Patricia Bustamante but, at the time of the sanction the union was not recognized by the court, as recognition was only obtained later, so that particular employee could hardly be described as a union official. In that regard, while the complainant indicates that the Supreme Court as employer adopted sanctions against the founders of the trade union (which was in the process of being established), given that it has not provided any further details (names, union office, dates, etc.) pertaining to these allegations, the Committee will not proceed with their examination.*

The Committee's recommendation

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

> ***Recalling that the right to hold meetings is essential for workers' organizations to be able to pursue their activities and that Article 6 of the Labour Relations (Public Service) Convention, 1978 (No. 151) – ratified by Argentina – lays down that "such facilities shall be afforded to the representatives of recognized public employees' organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently both during and outside their hours of work" and that the granting of such facilities shall not impair the efficient operation of the administration or service concerned, the Committee requests the Government to invite the parties to negotiate with a view to achieving agreement on the modalities for the exercise of the right to hold meetings, including the place for such meetings, as well as on the granting of facilities provided for under Convention No. 151. The Committee requests the Government to keep it informed in this regard.***

CASE NO. 2515

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

Complaint against the Government of Argentina presented by the National Federation of University Teachers, Researchers and Creators (Historic Federation of Teachers)

Allegations: The complainant alleges obstruction and discrimination in the procedure for obtaining trade union status

201. The complaint is presented in a communication from the National Federation of University Teachers, Researchers and Creators (Historic Federation of Teachers) dated August 2006.

202. The Government submitted its observations in communications dated 10 and 31 October 2007.

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

A. The complainant's allegations

204. In its communication of August 2006, the Historic Federation of Teachers alleges that on 16 December 2003 it applied to the Ministry of Labour for trade union status, in pursuance of the requirements for obtaining such status which are set forth under article 14bis of the National Constitution and Act No. 23551. The requirements, observations and requests formulated by the Ministry of Labour were duly complied with. The application for trade

union status was brought before the Ministry's National Directorate of Trade Union Associations (DNAS) in file No. 1081645/2003 and, in April 2006, the relevant legal departments ruled in favour of granting the requested status. Although the requirements set forth in the Act have been met, the administration has not gone on to issue its approval. Section 26 of Act No. 23551 states that "once the requirements have been met, the administrative labour authority shall take a decision within 90 days". To date, no reply to the specific request has been received through any form of administrative act, be it formal or verbal. In the light of the above and given the delay in granting the requested status, the complainant believes that the Government of Argentina is in breach of certain provisions of the ILO Conventions, the National Constitution (article 14bis) and Act No. 23551 (on trade union organizations).

205. The complainant also states that although the events described would in themselves be sufficient reason to lodge the complaint, it is necessary to describe the context of this state omission, which encompasses concrete acts of trade union discrimination and violations of trade union freedom and autonomy by the Government. Two other second-level trade union bodies represent the interests of teachers in national universities: the National Federation of University Teaching Staff (CONADU) and the Federation of University Teachers (FEDUN). The latter, FEDUN, was formed recently following a split with CONADU. The complainant alleges that although the Historic Federation of Teachers has fulfilled identical legal requirements to those met by FEDUN, the latter obtained trade union status within a period of exactly six months after being registered as a trade union, while the complainant has not yet received administrative approval to that effect. According to the complainant, this anomaly, which has previously occurred in identical procedures, constitutes unequal treatment before identical requirements and is a primary example of the Ministry of Labour's unlimited discretion in the exercise of the powers conferred upon it as the authority responsible for implementing Act No. 23551.

206. The complainant adds that a series of administrative acts, including actions and omissions by the Ministries of Labour and Education, constitute serious instances of trade union discrimination, of which the failure to grant the trade union status requested is merely one example. In this respect, the complainant cites the following acts of discrimination against it: (1) on 22 June 2005, the Ministry of Education initiated negotiations with a view to addressing wage-related issues concerning teachers and researchers in national universities. FEDUN, which was not yet registered as a trade union, was called on to participate, whereas the Historic Federation of Teachers was not; (2) a wage agreement was concluded between the Ministry of Education, the National Inter-University Council, as representative of the employers, and FEDUN, an association without trade union or legal status. The Historic Federation of Teachers was excluded from this agreement, even though the provisions it contains will apply to the entire sector (the agreement concluded has been approved by the Ministry of Labour); (3) the payment of a so-called "solidarity fee" was established in favour of the signatory trade union. At a hearing before the Ministry of Labour, the Ministry of Education undertook to pay this fee. The so-called "solidarity fee" forms part of the wage amount established in a wage agreement, which is paid by the employer and the trade union. The payment promised by the Ministry of Education constitutes an unlawful subsidy and an unfair practice; (4) FEDUN was registered as a trade union under resolution No. 782 of 26 September 2005, following the abovementioned events. FEDUN subsequently applied for trade union status in file No. 1146126/2005 (DNAS). On 23 March 2006, FEDUN was granted trade union status by the Ministry of Labour under resolution No. 256/2006; (5) it should be noted that by the time the complaint was lodged, almost three years had elapsed since the Historic Federation of Teachers had first applied for trade union status, and that it had already taken three years for the organization to become registered as a trade union. FEDUN was registered as a trade union within a period of three months and was granted trade union status before the end of the six-month time limit specified by law; (6) the Historic

Federation of Teachers comprises 20 first-level trade union associations from all over the country, while FEDUN is made up of only five.

207. The complainant notes that the present case concerns an allegation of flagrant violation of the principles set forth in the ILO Conventions, the National Constitution and national legislation, and that illegal, discretionary and discriminatory conduct of the kind described in this case has been commonplace in the activities of the Ministries of Labour and Education since at least the year 2000; the present case must accordingly be resolved and the State's anti-trade union conduct must cease. The Government's discriminatory conduct interferes directly with the internal activities of the Federation and is in violation of its rights deriving from federative autonomy and autonomy of action. The Argentinean Government's acts clearly favour one trade union body to the detriment of the Historic Federation of Teachers. Also called into question, once again, is the system of representative monopoly of the Argentinean trade union model, provided for under Act No. 23551, this time from the point of view of the very broad discretion exercised by successive governments when granting trade union status. In fact, the complex mechanism provided for under Argentinean legislation for granting trade union status to a trade union association is not only inconsistent with Convention No. 87, but has a negative impact, in all cases, on workers' associations and the exercise of their freedom of association rights. Such a system also allows Governments to make discretional use of the procedure and turn a right of workers and trade unions into a political privilege. The present case of discrimination has also been made possible by the specific legal mechanism's lack of transparency.

B. The Government's reply

208. In its communication of 10 October 2007, the Government indicates that, according to the information record of the Ministry of Labour, Employment and Social Security, file No. 1-2015.1.081.645/2005 is with the director of the Ministry's cabinet, demonstrating that the authorities at the highest level have tasked themselves with achieving a definitive and satisfactory resolution to the issue lying at the heart of the present complaint. In its communication of 31 October 2007, the Government indicates that contrary to the allegations, the complainant organization participated in meetings in which matters relative to the salaries of the professors and researchers of national universities were discussed.

C. The Committee's conclusions

209. *The Committee notes that in the present case the Historic Federation of Teachers alleges that on 16 December 2003 it applied to the Ministry of Labour for trade union status and that, despite it having fulfilled the requirements set forth by law, the administration has not taken a decision in this respect (the complainant alleges discriminatory treatment by the authorities in relation to another federation in the sector which obtained trade union status in less than six months and which was even called on to bargain collectively before receiving that status). The complainant also objects to Act No. 23551 on trade union associations, in respect of the requirements for granting trade union status.*

210. *The Committee notes that the Government indicates in a general manner that, as concerns the complaint, file No. 1-2015.1.081.645/2005 is with the director of the Ministry's cabinet, demonstrating that the authorities at the highest level have tasked themselves with achieving a definitive and satisfactory resolution to the issue lying at the heart of the present complaint.*

211. *The Committee notes 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, and 346th Report, Case No. 2477, paras. 209–246]. The Committee recalls 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., para. 54].

212. *In this respect, the Committee notes that, in the present case, four years have elapsed since the Historic Federation of Teachers applied for trade union status and that, bearing in mind the significant benefits enjoyed by organizations which have been granted such status, it is clear that the length of time that has elapsed is likely to have been detrimental to the complainant in the exercising of its activities – indeed, the complainant alleges that another federation (FEDUN) in the sector was called on to negotiate a wage agreement. In these circumstances, the Committee strongly urges the Government to register without delay the application for trade union status submitted almost four years ago by the Historic Federation of Teachers and to keep it informed in this respect. As regards the discriminatory treatment suffered by the Historic Federation of Teachers on account that the Government decided to call only on FEDUN (which at the time did not have trade union status) to negotiate a wage agreement, the Committee takes note of the Government's indication that contrary to the allegation, the Historic Federation of Teachers participated in meetings in which matters relative to the salaries of the professors and researchers of national universities were discussed.*

213. *As regards the allegations of broad discretion and discrimination exercised by the authorities when processing applications for trade union status, the Committee notes with concern that according to the information provided by the complainant, the trade union organization FEDUN was granted trade union status within the time frame specified under the legislation, i.e. six months, while in the case of the Historic Federation of Teachers almost four years have elapsed without the authority having taken any decision in this respect. More specifically, as regards the disputed requirements on the granting of trade union status, set forth in Act No. 23551 on trade union organizations, the Committee recalls that the Committee of Experts on the Application of Conventions and Recommendations has been commenting on this matter for many years now. In this respect, in its 2006 observation it refers to section 28 of the Act, under which, in order to challenge an 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. In this regard, the Committee of Experts expressed the following opinion [see Report III (Part 1A), p. 40 of the English version]:*

> *The Committee points out that a "considerably larger" membership amounting to 10 per cent more members than the union holding most representative status is too high a requirement and is contrary to the Convention. In practice, it stands in the way of trade unions that are merely registered and that wish to claim trade union status.*

Like the Committee of Experts, the Committee asks the Government to take, in consultation with representatives of workers' and employers' organizations, the necessary steps to amend the legislative provisions in question.

The Committee's recommendations

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

(a) The Committee strongly urges the Government to register without delay the application for trade union status – submitted almost four years ago – by the Historic Federation of Teachers and to keep it informed in this respect.

(b) The Committee asks 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.

CASE NO. 2262

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

Complaint against the Government of Cambodia presented by the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)

Allegations: The complainant organization alleges that some 30 leaders and members of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) have been dismissed because of their role in establishing a trade union in private companies in the garment sector

215. The Committee has already examined the substance of this case on three occasions, most recently at its June 2006 meeting, where it presented an interim report to the Governing Body [see 342nd Report, paras 223–234, approved by the Governing Body at its 296th Session].

216. The Government submitted partial observations respecting this case in a communication dated 17 October 2006.

217. As a consequence of the lack of a full reply on the part of the Government, at its June 2007 meeting [see 346th Report, para. 10], the Committee launched an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case even if the observations or information from the Government have not been received in due time.

218. Cambodia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

219. In its previous examination of the case, the Committee made the following recommendations [see 342nd Report, para. 234]:

(a) The Committee firmly urges the Government to make all efforts to ensure that Ms Chey Khunthynith is reinstated in her post or in a similar position without loss of pay or benefits, and enjoys full legal protection against acts of anti-union discrimination. If the competent court finds that her reinstatement is not possible, the Committee once again requests the Government to ensure that she receives adequate compensation so as to constitute sufficiently dissuasive sanctions in respect of such acts of anti-union discrimination. The Committee requests the Government to keep it informed of the decision issued by the competent court in respect of the complaint filed by the Department of Labour Inspection, and to provide it with a copy of that decision as soon as it is handed down.

(b) The Committee strongly urges the Government to provide its observations on its previous recommendations, as follows:

(i) the Committee requests the Government, in cooperation with the FTUWKC and the employer, to take appropriate steps to ascertain the identity of the complainant (Secretary-General of the FTUWKC) dismissed at the INSM Garment Factory and, once this is done, to ensure that this person is reinstated, and enjoys full legal protection against acts of anti-union discrimination or, if such reinstatement is not possible, that this person is paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles;

(ii) the Committee requests the Government to provide its observations regarding the dismissals of the President and 30 other union members of the FTUWKC at the INSM Garment Factory, after having obtained the relevant information from the employer. The Committee urges the Government to ensure, in cooperation with the employer concerned, that these workers are reinstated and enjoy full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions in conformity with the principles of freedom of association and collective bargaining;

(iii) the Committee requests the Government to provide it with the court decision concerning the dismissal of Ms Muth Sour at the Top Clothes Garment Factory. If the dismissal resulted from her trade union activities, the Committee requests the Government to ensure that she is reinstated and enjoys full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that she is paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles;

(iv) the Committee requests the Government to take appropriate measures so that the three union officials of the CCWADU dismissed at the Splendid Chance Garment Factory are reinstated and enjoy full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles.

(c) The Committee reminds the Government that it can avail itself of the technical assistance of the Office in order to assist with the drafting and enforcement of the appropriate legislation.

B. The Government's partial reply

220. In a communication of 17 October 2006, the Government stated that it had reached an agreement with the Cung Sing Garment Factory providing for Ms Chey Khunthynith's reinstatement. An invitation letter was sent to Ms Khunthynith on 5 June 2004, but thus far she has not returned to work.

221. In respect of the President and 30 union members of the FTUWKC dismissed from the INSM Garment Factory, the Government indicated that the Department of Labour Disputes had investigated the matter on 9 August 2006, with the union's cooperation. The investigation found that the concerned parties had been dismissed due to a lack of available work at the factory, rather than for reasons owing to their membership in or activities on behalf of the union. The Government added that these parties were provided with compensation, in accordance with the labour law, and that all had subsequently obtained new employment; the FTUWKC, furthermore, had confirmed the dismissed parties' receipt of compensation. Several supporting documents, in Khmer, are attached to the Government's report.

C. The Committee's conclusions

222. *The Committee deplores that, despite the time that has elapsed since this case was first examined, the Government has not fully replied to the Committee's recommendations, although it has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee strongly urges the Government to fulfil its obligations to comply with the Committee's procedure and its recommendations and to be fully cooperative in the future.*

223. *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had expected to receive from the Government in respect of all the pending matters.*

224. *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them.*

225. *The Committee recalls that this complaint initially concerned various allegations of anti-union discrimination, harassment and dismissals at three private companies in the garment and textile industry in Cambodia (INSM Garment Factory, Top Clothes Garment Factory and Splendid Chance Garment Factory). A further complaint of a similar nature was filed concerning the dismissal of Ms Chey Khunthynith, President of the FTUWKC local branch at the Cung Sing Garment Factory in Phnom Penh.*

226. *The Committee notes the Government's indication that, although an agreement providing for Ms Chey Khunthynith's reinstatement had been reached with the Cung Sing Garment Factory, Ms Khunthynith has yet to accept the reinstatement offer.*

227. *The Committee further notes that the Government's investigation into the situation at the INSM Garment Factory concluded that anti-union discrimination had not been a factor in the dismissal of the concerned parties – all of whom had received compensation for their*

termination from work in accordance with the law. While noting this information, the Committee observes that the Government does not specify whether it had ascertained the identity of the complainant (Secretary-General of the FTUWKC) dismissed from the INSM Garment Factory, and requested the Government to confirm that all the dismissed workers and union leaders who were the subject of the initial complaint have received adequate compensation. Noting that, according to the Government, this offer of reinstatement was made over three years ago, the Committee requests the Government to inquire into the employment situation of Ms Khunthynith and, if it appears that she still wishes to return to work at the Cung Sing Garment Factory, to take all possible steps to facilitate her reinstatement or, if this is not possible because of the length of time that has elapsed since her dismissal, to ensure that she receives adequate compensation so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination.

228. *The Committee deplores once again that, despite several reminders, the Government did not provide any reply concerning the other aspects of the case and its previous recommendations in respect of the situation at the Top Clothes Garment Factory and the Splendid Chance Garment Factory. The Committee therefore once again requests the Government to:*

(a) provide it with the court decision concerning the dismissal of Ms Muth Sour at the Top Clothes Garment Factory. If the dismissal resulted from her trade union activities, the Committee requests the Government to ensure that she is reinstated and enjoys full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that she is paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles;

(b) take appropriate measures so that the three union officials of the CCWADU dismissed at the Splendid Chance Garment Factory are reinstated and enjoy full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles. It again urges the Government to keep it informed of the steps taken in this regard.

229. *In previous examinations of this case, the Committee had commented upon the discernible pattern in all the situations complained of in this case, i.e. repeated acts of anti-union discrimination, often culminating in dismissals, and an apparent lack of effectiveness of the sanctions provided for in the law to remedy such acts of anti-union discrimination. The Committee, moreover, had expressed similar concerns with the lack of legislative protection against acts of anti-union discrimination in other cases concerning the Government [Case No. 2468, 344th Report, para. 436]. In this connection, the Committee emphasized that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials, because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 799]. The Committee therefore once again urges the Government to take steps to strengthen the protective measures afforded by the legislation, through, among others, the effective provision for reinstatement of trade union officials dismissed due to anti-union discrimination and the provision of sufficiently dissuasive sanctions, including the provision of adequate*

compensation when reinstatement is not possible and reminds the Government that it can avail itself of the technical assistance of the Office in this regard.

The Committee's recommendations

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

(a) The Committee strongly urges the Government to fulfil its obligations to comply with the Committee's procedure and its recommendations and to be fully cooperative in the future.

(b) The Committee requests the Government to inquire into the employment situation of Ms Khunthynith and, if it appears that she still wishes to return to work at the Cung Sing Garment Factory to take all possible steps to facilitate her reinstatement or, if this is not possible because of the long time that has elapsed since her dismissal, to ensure that she receives adequate compensation so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination.

(c) The Committee once again requests the Government to provide it with the court decision concerning the dismissal of Ms Muth Sour at the Top Clothes Garment Factory. If the dismissal resulted from her trade union activities, the Committee requests the Government to ensure that she is reinstated and enjoys full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that she is paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles.

(d) The Committee again urges the Government to take appropriate measures so that the three union officials of the CCWADU dismissed at the Splendid Chance Garment Factory are reinstated and enjoy full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles. It requests the Government to keep it informed of the steps taken in this regard.

(e) The Committee once again urges the Government to take steps to strengthen the protective measures afforded by the legislation through, among others, the effective provision for reinstatement of trade union officials dismissed due to anti-union discrimination and the provision of sufficiently dissuasive sanctions, including the provision of adequate compensation when reinstatement is not possible and reminds the Government that it can avail itself of the technical assistance of the Office in this regard.

CASE NO. 1787

INTERIM REPORT

Complaints against the Government of Colombia presented by
— the International Trade Union Confederation (ITUC)
— the Latin American Central of Workers (CLAT)
— the World Federation of Trade Unions (WFTU)
— the Single Confederation of Workers of Colombia (CUT)
— the General Confederation of Democratic Workers (CGTD)
— the Confederation of Workers of Colombia (CTC)
— the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA)
— the Petroleum Industry Workers' Trade Union (USO) and others

Allegations: Murders and other acts of violence against trade union leaders and trade unionists

231. The Committee last examined this case at its November 2006 meeting [see 343rd Report, paras 375–427, approved by the Governing Body at its 297th Session, November 2006]. The International Confederation of Free Trade Unions (ICFTU) (now the ITUC) sent new allegations in a communication dated 27 September 2006. The Petroleum Industry Workers' Trade Union (USO) sent new allegations in a communication dated 21 September 2006. The National Association of Civil Servants and Employees in the Judicial Branch (ASONAL JUDICIAL) sent new allegations in a communication dated 6 October 2006. The ITUC sent new allegations in communications dated 22 February, 19 March and 17 April 2007. The National Federation of Agricultural Unions (FENSUAGRO) sent new allegations in a communication dated 5 June 2007. The World Federation of Trade Unions (WFTU) sent new allegations in communications dated 16 May and 13 August 2007. The CUT also sent new allegations in a communication dated 16 August 2007 and the ITUC in a communication of 13 September 2007.

232. The Government sent its observations in communications dated 4 November 2006, 30 May and 1 October 2007.

233. 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. Previous examination of the case

234. At its November 2006 meeting the Committee made the following recommendations on the allegations that remained pending and that relate principally to acts of violence against trade unionists [see 343rd Report, para. 427]:

(a) In general, the Committee observes that, bearing in mind the new allegations relating to murders, disappearances, threats, detentions and harassment suffered by trade union officials and members, there is still an extremely serious problem of violence in Colombia.

(b) The Committee, whilst noting the protection measures being put in place by the Government, requests it to continue taking all possible steps to provide effective protection for all trade union members, enabling them to exercise their trade union rights freely and without fear. The Committee stresses the need for the interested parties to be able to rely on this protection, and requests the Government to indicate the reasons why the unions have not benefited from the mobile protection and security perimeter installation schemes in 2006.

(c) The Committee once again urges the Government, in the strongest possible terms, to take the necessary steps to pursue the investigations that have been initiated and to put an end to the intolerable impunity that currently exists, in order that all responsible parties can be effectively punished.

(d) The Committee firmly expects that the tripartite agreement signed in June 2006 between the Government and the social partners, which includes plans for permanent representation of the International Labour Organization and provides for careful follow-up of the findings of the Office of the Public Prosecutor's special investigation group to combat impunity, will yield tangible results in the near future.

(e) The Committee requests the Government to keep it informed regarding the entry into force and the mode of application of the Justice and Peace Act, No. 975, of 2005, and its effect on the cases of violence still pending.

(f) As regards the allegations concerning the existence of a plan, known as "Operation Dragon", to eliminate various trade union officials, the Committee firmly expects that, in light of the extremely serious nature of the allegations presented, the investigations can be properly concluded, and requests the Government to send information on developments in these investigations.

(g) As regards the allegations presented by the ICFTU concerning accusations made by a former member of the Administrative Department for Security, the Committee, stressing the serious nature of the accusations, requests the Government to carry out an independent investigation as a matter of urgency and to inform it of the outcome.

B. New allegations

235. In their communications of 21 and 27 September and 6 October 2006 and 22 February, 19 March, 17 April, 5 June and 13 August 2007, the complainant organizations refer to the following allegations:

Murders

1. Hugo Hernán Preafán Gómez, a member of ASONAL JUDICIAL, on 31 October 2006, in Villavicencio, Meta.

2. Daniel Ruiz Bedoya, member of the Branch Union of the Guard of the National Prison Institute, on 9 January 2007, in Itagüí.

3. Jaime Vanegas Castellanos, member of the Association of Teachers of the Atlantic, on 14 January 2007, in Solead.

4. Francesco Bedoga Burgos, member of the Nariño Educational Workers' Union (SIMANA), on 15 January 2007, in Ricaurte.

5. María Teresa Chicaiza Barbano, member of the Nariño Educational Workers' Union (SIMANA), on 15 January 2007, in Ricaurte.

6. Arnoldo Enrique Campo Medina, member of the César Teachers' Association (ADUCESAR), on 29 January 2007, in Chiriguana.

7. Luis Fabián Moreno Marín, member of the Risaralda Teachers' Union (SER), on 1 February 2007, in Pereira.

8. Carmen Cecilia Santana Romaña, member of the Complaints Committee of the Trade Union of Stockworking Industry Workers (SINTRAINAGRO) and wife of Mr Hernán Correa Miranda, first Vice-President of the CUT, on 7 February 2007, in Apartadó.

9. William Cabuyales Diáz, President of the Agricultural Workers' Union of Cabuyal, member of the regional board of FERTRASUCCOL, on 28 February 2007, in Cali.

10. Alcira Tapia Muñoz, member of the Primary Teachers' Association of Cauca (ASOINCA), on 21 March 2007, in Popayán.

11. Teresa Silva, member of the Primary Teachers' Association of Cauca (ASOINCA), on 28 March 2007, in Santander.

12. Miguel Macías, member of the Primary Teachers' Association of Cauca (ASOINCA), on 27 April 2007, in Caldono.

13. Luis Miguel Gómez Porto, President of the Sucre Farm Workers' Union (SINDAGRICULTORES), affiliated to FENSUAGRO, on 3 May 2007, in the village of Ojito, municipality of Colosó, department of Sucre. He had been detained on 11 June 2004 by the Marina Infantry, accused of rebellion, and an unauthorized search of his home was subsequently carried out on 11 April 2005. FENSUAGRO accuses the Marina Infantry of his murder.

14. Ana Silvia Melo de Rodríguez, founder and former Director of the "Manuela Betrán" Union of Workers and Retailers of Food and Drinks in the Plaza del Mercado del Barrio San Francisco (SINDIMANUELA), on 19 May 2007.

15. Andrés Melán Cardona, son of a trade unionist of Textiles Ríonegro, on 6 June 2007, in Ríonegro, when his wife and brother were also wounded.

16. Julio César Gómez Cano, member of the Primary Teachers' Association of Antioquia (ADIDA), on 23 June 2007, in Ríonegro.

Assaults on persons

1. On 14 May 2006, two men injured the son of Eduardo García Fuente, an ANTHOC official.

2. On 15 August 2006, Ms Martha Cecilia Díaz Suárez, President of the Bucaramanga Executive Committee of the Santander Association of Public Servants, was abducted, intimidated and assaulted.

3. Henry Alzate, Vice-President of the National Union of Workers in Gastronomy, Hotel and Allied Industries (Hogar–CGT), Cali branch of the CGT, on 13 February 2007, on the Cali South-Eastern motorway.

Threats and harassment

1. Threats against SINTRAMINERGETICA, in particular against Rubén Morrón, on 13 June 2006.

2. Threats against the National Trade Union School, which has been declared a military target.

3. Threats against the "José Alvear Restrepo" Society of Lawyers (which represents a number of trade union organizations).

4. Threats against SINALTRAINAL, on 5 May 2006, in particular against Eurípides Yance and Limberto Carranza, Jesús Tovar Castro, Henry Gordon, Tomás Ramos Quiroz, Gastón Tesillo, Carlos Hernández and Héctor Jairo Paz.

5. Threats against Domingo Tovar Arrieta, director of the Human Rights Department of the CUT.

6. Threats against the members of the Bochica Export SA Workers' Union, by the armed group Aguilas Negras del Oriente, after the trade union was set up on 28 January 2007. Pressure by members of the enterprise for the trade union not to be set up and threats against the wives of the trade union members.

7. Threats against the executive committees of SINTRATELEFONOS, SINTRAUNICOL, SINTRAEMCALI, FECODE, ANTHOC and UNEB.

8. Harassment of the leaders of the United Teachers' Organization of Caldas (EDUCAL), with the suspension of trade union leave and the initiation of disciplinary and administrative proceedings.

9. Threats against Raúl Enrique Gómez Velasco, President of the Free Workers' Federation of North Santander (FETRALNORTE), who on 12 June received the last of a series of threats, for which reason he decided to relocate with this family.

Detentions

1. José Piñeres, 83 years of age, was detained on 30 April; a member of FENSUAGRO.

2. Luis Fernando Duque, Telmo Cuero Tegue, César Adolfo Castro, Santander Tapias Morelo, Arbey Mina Estupiñán, Humberto Jaime Tenganan, Argemiro Narváez, Yarli Enerica Maniguaje, Ariel Ortiz Ramírez, María I Cabrera, were detained collectively on 11 February 2006 at the Puerto Asís Putumayo prison, accused of participating in the capture of the Teteye military base; members of organizations affiliated to FENSUAGRO.

3. María del Rosario M., on 29 January 2006, who was later released.

4. Omar Alberto Murcia Nova, on 1 March 2006, who was released on 27 March owing to lack of proof; a member of organizations affiliated to FENSUAGRO.

5. Flor María Díaz, on 14 February 2006, at the Buen Pastor prison; a member of organizations affiliated to FENSUAGRO.

6. Luis Arnulfo Quiroga, on 27 March 2006, accused of rebellion.

7. Emilio Vargas Cortez, Carlos Alirio Romero, Esteban Bello, on 23 November 2005, for refusing to collaborate with the army; they have been released, but the case is not closed; members of organizations affiliated to FENSUAGRO.

8. Yamid Delgado Susa, on 28 December 2005, accused of being a guerrilla fighter, has been released, but the case is not closed; member of organizations affiliated to FENSUAGRO.

9. Edilma Firacative, Vitelvina Vargas Cortes, detained on 3 April 2006, accused of rebellion, have been released; members of organizations affiliated to FENSUAGRO.

10. Agustín Ortiz, on 16 February 2006, has been released; member of organizations affiliated to FENSUAGRO.

11. Alvaro Reyes Ruiz, Rosires Villegas Cárdenas, Juan Cárdenas Caucil, Elías Arrieta Lambraño, Antonio José Madera, Anselmo Vitoria, Antonio Tovar (father and son), Gerardo Salcedo, Nelson Mercado, Ideal Mejía, Evert Salgado, Yayo Salgado, Alberto Salgado Reyes Mejía, detained en masse on 26 May 2006, accused of rebellion; members of organizations affiliated to FENSUAGRO.

12. Nieves Mayusa, Miguel Angel Bobadilla, Fanny Perdomo Ite, detained on 22 May 2006; members of organizations affiliated to FENSUAGRO.

13. Víctor Oime Hormiga, Aristides Oime, Eduviges Ochoa, detained on 6 August 2006, accused of rebellion; members of organizations affiliated to FENSUAGRO.

14. William Sharry, detained on 10 November 2006, arbitrarily, without a court order, by the army; member of organizations affiliated to FENSUAGRO.

15. William Parra Rubio, Emilio Labrador Díaz, on 19 March 2007, by the national army; members of organizations affiliated to FENSUAGRO.

Violence against demonstrators

1. On 9 February 2007, the members of the trade union organizations of the enterprises Glencore and Drummond and their families carried out a peaceful protest at the entrance to and exit from the village where the coalmine they exploit is located. This demonstration was violently repressed by the riot police, causing the death of Manuel Celis Mendoza and injuries to Laura Valentina Palma Ortiz, Gabriel Enrique Gómez, Neger Robles, Huges Coronel, Yely Karina Fonseca, Jairo Díaz and Yesy Liced Guerrero.

2. On 8 June 2007, during a peaceful demonstration in the city of Manizales, the anti-riot flying squad ESMAD violently assaulted Juan Carlos Martínez Gil, member of the United Teachers' Organization of Caldas (EDUCAL).

236. In its communication dated 17 April 2007, the ITUC refers to the allegations made previously concerning the Administrative Department for Security (DAS) and submits a document entitled "The integrity of trade unionists in Colombia: Respect for trade union rights and freedoms and cleaning up the entities responsible for protection", in which it alleges that the Department has close ties with the paramilitary forces. The ITUC considers that this connection raises doubts about the Government's claim that it would do everything possible to end the violence and impunity suffered by the trade union movement.

237. According to the ITUC, the statements received from the Deputy Director of Intelligence on 1 March 2006 by the Office of the Public Prosecutor, in the framework of the investigations that are currently under way, show that a policy exists to monitor and observe trade union activity and trade union officials, and that the information is used abusively and illegally and divulged to the paramilitary groups, which use it to violate the

fundamental rights of trade union leaders and members. This information was published by the Colombian media following statements made by former and current high-level officials of the entity, and demonstrates, according to the report, that in contrast to what the Government has said, rather than concentrating on the safety of the members of trade union organizations, it in fact contributes to the risks they face.

238. The DAS has a close and direct link with the President of the Republic, who appoints its director. The principal objective of the DAS is the formulation and adoption of policies in the administrative sector of intelligence and security. Moreover, it has other functions, such as gathering and processing national and international information to produce state intelligence, managing state intelligence, coordinating the exchange of information with national and international entities and acting as a criminal investigation body. The DAS is also responsible for providing personal protection services to persons who, owing to their responsibilities, position, functions or for other specific reasons, could be the target of attacks on their person when this could lead to breaches of public order. These persons include trade union leaders, human rights defenders and NGOs. The DAS has to carry out studies to assess the level of risk to the persons under threat who wish to be covered by the programmes of the Ministry of the Interior, and has to evaluate and classify the risk and decide on the appropriate measures to be taken. Lastly, if a protection scheme is assigned (armoured cars, bodyguards, means of communication, etc.) to the trade union official, the DAS is involved. According to the report, the function of protecting trade union leaders is not compatible with the fundamental function of the DAS, which consists of gathering and providing information to ensure state security.

239. The ITUC also refers to the complaints lodged by the IT Director of the DAS, detained on 29 January 2005, who reported ties between paramilitary leaders, drug traffickers and the DAS, for the purpose of murdering left-wing leaders. According to the report, DAS detectives used official vehicles and weapons to provide protection to a member of the paramilitary groups, to stop him being captured by the national police.

240. The Deputy Director of intelligence operations at the DAS told the authorities that her subdepartment is responsible for compiling in its databases all information relating to trade union activities: marches, protests, participants and leaders. The paramilitary presence within the DAS therefore gives grounds for grave concern for the Colombian trade union movement, as the DAS that is responsible for providing it with protection.

241. According to the report there is also a strategy in place to exterminate the trade union movement, based on a list containing the names of left-wing activists to be dealt with by the self-defence forces (a paramilitary group). This list contains the names of 22 trade unionists. Seven of them have already been murdered, one has disappeared, five have been arbitrarily detained by state agents and one has received death threats. Two people have been assaulted. According to the report, in his statements the former IT Director indicated that DAS officials drew up the list and communicated it to members of the self-defence forces of Colombia at the DAS offices. According to these statements, the reason why the trade unionists were included on the list is "that they were people with connections to left-wing sectors that, according to intelligence within the DAS, they had been unionized as a result of collaborating with guerrilla groups".

242. This list includes the following persons, among others (some of whom have already been mentioned in previous examinations of this case):

1. Víctor Manuel Jiménez Fruto, disappeared on 22 October 2002 in Ponedera.

2. Saúl Alberto Colpas Castro, murdered on 13 July 2001 in Ponedera; he was the President of SINTRAGRICOLAS.

3. José María Maldonado, murdered on 17 May 2005 in Ponedera; member of SINTRAGRICOLAS.

4. Carmelo Piñeros, Alfonso Piñeros, Alberto Acosta, Argelio Contreras and Alfredo Oviedo were detained by members of the navy on 22 December 2003.

5. Zuly Esther Codina Pérez, murdered on 11 November 2003 in Santa Marta, was the leader of the National Union of Health Workers (SINDESS) and of the Magdalena branch of the CGT.

6. César Augusto Fonseca, José Rafael Fonseca and José Ramón Fonseca, murdered on 1 September 2003 by suspected paramilitaries; they were members of SINTRAGRICOLAS, affiliated to FENSUAGRO.

7. Gilberto Martínez, Carmen Torres, Alvaro Márquez, José Meriño and Angel Salas were threatened by paramilitaries on 13 January 2004 by the United Self-Defence Forces of Colombia.

8. Alfredo Correa de Andreis and Edgard Ochoa Martínez, murdered by suspected paramilitaries on 17 September 2004; members of FENSUAGRO–CUT.

9. Nicolás Hernández Cabrera and Jaime Rodríguez, assaulted on 20 December 2003 in Ibagué; members of FENSUAGRO.

10. Miguel Angel Bobadilla, injured in an assault on 19 November 2003 in Bogotá; member of FENSUAGRO.

243. The investigations initiated into the various criminal offences targeting the above persons have not led to any positive results.

244. In its communication of 13 August 2007, the WFTU alleges that the President and Vice-President of the nation have begun a campaign of slander and threats against the trade union movement, accusing them of having connections with the guerrilla forces.

C. The Government's reply

245. In their communications of 4 November 2006 and 30 May 2007, the Public Prosecutor and the Chief of the National Human Rights and International Humanitarian Law Unit of the Office of the Public Prosecutor both presented reports relating to the work carried out by the Office of the Public Prosecutor to combat impunity. The Government sent observations in a communication dated 1 October 2007.

246. They indicate that in order to move forward in combating impunity, and in the framework of the Tripartite Accord for Freedom of Association and Democracy, inter-administrative agreement No. 156 of 2006 was signed to give fresh impetus to cases of human rights violations against trade unionists. Furthermore, in order to promote inter-institutional cooperation between the Offices of the President of the Republic, the Vice-President and the Public Prosecutor, strategies are being developed to try to shed light on the facts, to identify those responsible for masterminding and carrying out the violations, to impose more severe sentences and to prevent offences against the human rights of trade unionists, by adopting the necessary inter-institutional, national and local plans and programmes. The main objectives are to implement mechanisms to promote and monitor ILO cases, optimize the investigative process in legal investigations where the victim has ties with trade union organizations, process cases and relieve pressure on judicial offices, undertake a qualitative analysis of information and develop criminal policy processes. Under the terms of the

Accord, the Office of the Public Prosecutor has appointed 13 prosecutors, detached with their own respective groups of investigators, and dealing exclusively with cases relating to trade unionists. In addition, 24 lawyers are dealing with the substantive elements of the investigations.

247. In addition, the Superior Council of the Judiciary extended agreement No. 3592 of 2006 to establish three specialized criminal courts to relieve pressure in Cundinamarca so as to deal with the judicial proceedings relating to Case No. 1787.

248. Up to now, the State of Colombia has allocated the following resources for the project to give impetus to cases: police – 770,000,000 pesos (ca. US$385,844); Office of the Public Prosecutor – 4,010,000,000 pesos (ca. US$2,019,815.35); Higher Council of the Judiciary – 550,000,000 pesos (ca. US$270,000).

249. Complaints have been lodged with the ILO concerning 1,319 cases that are in the process of being verified and validated by the Office of the Public Prosecutor. Of these, 128 have been pre-selected for special attention and initial follow-up. In making this selection account was taken, among other matters, of the following criteria: the cases must reflect the overall situation of anti-union violence; where a situation of impunity is overcome in a particular case, this should serve as a source of outcomes and recommendations on methods for achieving justice in all cases of anti-union violence; the selected cases must be clear-cut regarding the victim's status as a trade union member; there should be abundant, reliable and verifiable information on the selected cases; and they must provide a demonstration of the systematic and widespread perpetration of violations of rights.

250. The Office of the Public Prosecutor states that much work has been done and rulings have been handed down in 37 cases involving 47 victims.

251. The Government adds that the selected prosecutors are working assiduously, carrying out missions and gathering evidence, as well as reopening cases that have been shelved or set aside. In practice, 383 cases have been re-examined.

252. In general terms, according to the Government, the following progress has been made in the cases under investigation.

Category	No.
Cases under investigation	59
Individuals related to cases under investigation	123
Cases before the courts	34
Individuals before the courts	77
Victims in cases before the courts	65
Cases in which convictions have been handed down	56
Persons convicted	112

253. With regard to the allegations relating to the DAS, the Government indicates that the President of the Republic, when notified of the charges concerning alleged irregularities within the DAS, called upon the then Director of the DAS, Jorge Noguera Coles, to resign from his position, which he did on 25 October 2005. He also declared void the appointment of the then Deputy Director of the DAS, José Miguel Narváez.

254. It adds that the measures adopted by the Government made public the information on the alleged irregularities in the DAS. This made it possible to launch independent disciplinary

and penal investigations by the Office of the Procurator-General and that of the Public Prosecutor.

255. The Government adds that, by means of Decree No. 4201 of 18 November 2005, the President of the Republic established an independent and temporary commission in the DAS with the objective of establishing the origins of the crisis and making the recommendations that were considered appropriate. The above commission was set up for a period of six months and the following appointments were made:

- a former Director of the Reform Programme of the Public Administration;
- a former Procurator-General and university professor;
- a former Director of the DAS, newspaper columnist and university professor, a recognized opponent of the Government;
- a former Presidential Adviser;
- a former Deputy Director of the DAS, an official with over 20 years seniority in the DAS and who is now the Director of the DAS Intelligence Academy.

256. On 7 January 2006, the independent and temporary commission submitted a first report to President Álvaro Uribe, and on 7 March of the same year it submitted its final report. Both reports were made public and are in the public domain. The above commission recommended the maintenance of the DAS as a civil intelligence agency and, within one year, the adoption of the following measures:

(a) Establishment of a civil body at the highest level directly responsible to the President of the Republic with the function of formulating the national intelligence plan, defining institutional responsibilities in this field and determining priorities for intervention. This body should coordinate the activities of the various participating authorities and serve as a forum for communication between them, without the various agencies that currently exist losing their respective autonomy or being under the control of a single central body.

(b) Establishment of a modern legal framework to ensure effectiveness in the collection and accurate analysis of intelligence information, and also to protect officials in the exercise of their legally determined functions.

(c) Strengthening and reorientation of the DAS as the intelligence and counter-intelligence agency of the Colombian State. In this respect, it recommended: adapting the training of its officials, as well as the whole of its institutional structure and the essential processes of its action and, for this purpose; strengthening the units responsible for intelligence and counter-intelligence in terms of skilled personnel, financial resources and technological support; and, as a consequence, renaming the agency the Administrative Intelligence Department (DAI).

(d) Maintaining the functions of the criminal investigation police of the DAS (under the coordination of the Office of the Public Prosecutor), however with their scope and practice restricted to the essential aspects of their functions.

(e) Maintaining as a priority function of the DAS the administrative and legal responsibility of acting as the INTERPOL Bureau in Colombia, while establishing an effective system of relations with the other authorities engaged in intelligence missions.

(f) Maintaining as a priority of the DAS the function of migration control, strengthening the coordination and collaboration mechanisms to facilitate appropriate access to the information required by other authorities to fulfil their respective legal responsibilities.

(g) Transferring to the national police the functions of the protection of persons at risk, except for high-level members of the Government, who should remain the responsibility of the DAS. This should ensure effective protection for those for whom it is really necessary, which should be provided in accordance with international human rights commitments.

(h) Implementing a specific system of administrative careers applicable to all those engaged in missions and human resources management, adopting an individual approach. A rigorous professional approach has to be developed from the training of officials through to their retirement, and including their recruitment, period of engagement and promotion. For this purpose, rules are proposed for specialized training, meritocracy and democracy and, in general, it is recommended that mechanisms should be adopted to enable career officials to gain access to the highest positions in the agency.

(i) Adopting a new corporate intelligence culture characterized by compliance with legality, high professional quality and the low profile of officials.

(j) The commission reiterates the need for the Office of the Procurator-General and that of the Public Prosecutor to achieve results as soon as possible with regard to the charges made by the directors of the Department in relation to the crisis which affected the DAS.

257. Finally, the commission categorically supported the remedial measures adopted by the Director, the sole objective of which was to achieve greater confidence in the agency and its staff.

258. The Government emphasizes that the progress achieved in relation to the recommendations made by the commission were as follows:

(a) The Higher Council of National Security and Defence, chaired by the President of the Republic, was maintained and coordinates the civil, police and military authorities at the national level and defines the missions of each institution to ensure cooperation between agencies in the security and defence sector, particularly in relation to intelligence.

(b) The Ministry of Defence is currently preparing a Bill to regulate intelligence activities in Colombia and ensure the protection of the agents engaged in this function. The DAS has participated actively in the formulation of the Bill.

(c) A revision was carried out of the academic curriculum of the Intelligence Academy, with a view to a career plan which allows the inclusion of more professionals in essential areas of DAS functions. The process of restructuring the DAS was also initiated in relation to its mission areas, seeking transparency and effectiveness in its action, as well as an effective reporting procedure.

(d) In coordination with the Office of the Public Prosecutor, the responsibilities of the DAS were determined in relation to the criminal investigation police, with a view to allocating the agency’s forces to major crimes.

(e) The restructuring envisages that the INTERPOL National Central Bureau in Colombia will be under the responsibility of the Office of the Director of the DAS, with administrative and budgetary autonomy.

(f) In the field of migration control, an improvement has been sought in service to the client with fewer complaints, greater efficiency, better use of resources in accordance with a process of the modernization of the migration control function. In the restructuring, the migration office will also become a directorate under the responsibility of the Office of the Director of the DAS.

(g) The Director of the DAS is playing the lead role in cutting back the protection of dignitaries: to date, 96 files have been transferred to the national police, equivalent to 28 per cent of the numbers escorted by the DAS, allowing the reassignment of 197 officers previously allocated to this function to the support and strengthening of intelligence and criminal investigation functions. For 2008, the Government is planning to transfer the administration of the protection programme from the Ministry of the Interior to the police, including the component covering trade union leaders (Protection Bureau of the DAS, September 2007).

(h) A policy has been determined based on meritocracy for the administration of human skills, in which the capacities of DAS officers are evaluated with a view to implementing a promotion and opportunities policy.

(i) In accordance with the policy of transparency and efficiency, the DAS developed a risk map which helped to identify the most sensitive positions within the agency. In accordance with this policy of risk evaluation, a total of 1,220 loyalty studies have been undertaken with polygraph evaluations, of which 951 corresponded to the risk map evaluation and 269 to procedures related to meritocracy.

(j) Both the Office of the Public Prosecutor and that of the Procurator-General are still proceeding with investigations into the situation of the DAS during the administration of Jorge Noguera Coles.

259. The Government indicates that, from the very first, the Colombian Government took the initiative of carrying out an independent and exhaustive investigation in the DAS through the commission referred to above. It also adopted appropriate measures prior to carrying out the investigations, such as requesting the resignation of the Director and declaring the appointment of the Deputy Director void, with a view to facilitating the work of penal and disciplinary investigation bodies and obtaining transparent results.

260. During the period when Dr Andrés Peñate was Director of the DAS, 417 internal investigations were also undertaken involving 675 officers, of whom 166 were dismissed by administrative decision and 25 were prosecuted.

261. With regard to the relation between the DAS and the Programme for the Protection of Trade Union Leaders, the Government indicates that the Risk Evaluation and Regulation Committee (CRER), composed of the Deputy Minister of the Interior, the Human Rights Director of the Ministry of the Interior and Justice, the Director of the Presidential Programme for the Promotion, Respect and Guarantee of Human Rights and the Application of International Humanitarian Law, the Director of the DAS, the Director-General of the national police and the Director of Social Action, takes its decisions with the participation and approval of the representatives of trade unions and all of its constituent institutions. In light of the provisions respecting the functions of the DAS and the legislation that is in force, the information is restricted and consequently any irregular use of the information will be sanctioned and penalized. The Colombian Government has taken every measure to guarantee transparency within the DAS and has provided full means for

the Office of the Public Prosecutor and that of the Procurator-General to carry out the investigations in an independent and impartial manner.

262. The Government emphasizes that, in accordance with the investigations carried out by the Office of the Public Prosecutor and the DAS, it has not been possible to establish the existence of the list referred to in the complaint.

263. With regard to the Peace and Justice Act, the Government indicates that the process of the demobilization of over 30,000 members of the AUC has been supported by the unswerving commitment of all the institutions of the Colombian State in the context of the peace process in which the present Government is taking the lead. The demobilization and disarmament of these structures has been achieved as a consequence of the notable action of the Colombian authorities, with the appropriate support of international organizations, has been followed by NGOs, and has the support of the victims. As a result, the achievements include the recuperation by the State of the lands in which demobilization has occurred, a decrease in the incidence of violence, the effective application of compensation procedures for victims (the priority actors), the seeking of the truth as an essential element of the process and the reintegration into civilian life of those who lay down their arms.

264. The Government emphasizes that this is the first demobilization process in the world which requires total truth from those who are demobilized and guarantees the rights of victims to justice and comprehensive compensation. The Constitutional Court found the Peace and Justice Act to be in accordance with the Political Constitution and international treaties. The Act provides for independent decisions by the courts. The leaders of self-defence forces are detained in high-security prisons. The President of the Republic has ordered direct combat against groups which have sought to re-emerge and the Director of the national police submits a public monthly report on the results (report No. 15). A total of 16,500 weapons have been handed over. As of 17 September 2007, a total of 31,717 members of the AUC had been demobilized. Two specialized justice and peace chambers have been established in the High Courts of Bogotá and Barranquilla, and 40 officials, 18 magistrates and 22 employees have been appointed for the auxiliary magistrates chamber in the penal section of the Supreme Court of Justice. An allocation of almost 80,000 million pesos has been made to the Office of the Public Prosecutor.

265. With regard to the progress achieved, the Government attaches the following table:

Number of cases brought under Act No. 975 of 2005	
Number of applicants *	2 978
Representative members who are applicants	25
Representative members who are applicants and are detained	21
Representative members who are applicants and sought through extradition	8
Detained applicants **	381
Applicants at liberty with judicial records	414
Applicants without records	2 183
Applicants not located	84
Applicants located in departments ***	2 099

Information: 17 Sep. 2007.

Notes:

* The lists were submitted by the National Government between 17 Aug. 2006 and 22 Aug. 2007.
** The Government proposed 197 persons for the procedure envisaged for those in detention at the time of demobilization.
*** With the assistance of the Office of the Senior Adviser for Integration, the whereabouts of the applicants was identified by department, although the address of their place of residence is not available.

Inquiries based on initial statements	
Commenced	224
Completed	172
Representative members and commanders who have made statements	20
Programmes	474

Information up to 17 Sep. 2007.
Note: Inquiries based on statements include representative members and commanders (see attached table).

Notifications to victims with time limits	
Published	1 731
To be published	397

Information up to 17 Sep. 2007.

Inquiries involving exhumation	
Graves exhumed	756
Corpses found	925
Bodies with proof of identification (DNA tests and awaiting laboratory tests)	340
Bodies fully identified and being handed over	60
Bodies handed over to families	53

Inquiries undertaken between 29 Mar. 2006 and 12 Sep. 2007.
Note: Proof of identity is determined through ante-mortem data (dental records, fractures, clothing and personal objects).

Information for victims	
Victims informed	78 395
Information days convened for victims in 2006 (1,602 victims informed)	17
Information days convened for victims in 2007 (13,706 victims informed)	69

Information up to 14 Sep. 2007.

266. With regard to allegations relating to the detention of trade unionists, the Government indicates that Ender Rolando Contreras García (Treasurer of SINTRAELECOL) and Edgar Botero Cárdenas are being tried for the crime of rebellion and the case is awaiting judgement by the Court of Arauca. Emiro Goyeneche Goyeneche was convicted of the crime of rebellion by the Criminal Court of the Saravena circuit and sentenced to 72 months of imprisonment with the additional penalty of proscription from exercising public rights and functions. Similarly, on 3 August 2007, Luis Raúl Rojas Gutierrez, Luis Ernesto Goyeneche Goyeneche and others were convicted by the Single Criminal Court of the Arauca circuit of the crime of rebellion and were sentenced to 72 months of imprisonment for joint responsibility for the crime of rebellion.

267. Samuel Morales Flórez and María Raquel Castro Pérez were convicted of the crime of rebellion and sentenced to 72 months of imprisonment and a fine of 100 statutory minimum monthly wages at the current rate and an additional penalty of proscription from exercising public rights and functions.

268. The Government adds that the definition of the crime of rebellion is as follows:

> Section 467. Rebellion. Anyone who, through the use of arms, attempts to bring down the National Government or suppress or modify the current constitutional or statutory system, shall be liable to imprisonment for between ninety-six (96) to one hundred and sixty-two (162) months and a fine of from one hundred and thirty-three point thirty-three (133.33) to three hundred (300) statutory minimum monthly wages at the current rate.

269. The Government adds that Miguel Angel Bobadilla is under trial for the crimes of abduction with extortion by the anti-abduction unit in case No. 70356, Procurator's Office 09, and that judgement is awaited. According to the information provided by the Prosecutor's Office, the investigation against Mr Bobadilla was initiated by the abduction of Rubén Darío Ramírez on 19 December 2002.

D. The Committee's conclusions

270. *The Committee notes the communications submitted by the ITUC, the WFTU, the USO, the ASONAL JUDICIAL and the FENSUAGRO, which contain serious allegations of murders, disappearances, mass detentions and links between administrative bodies and paramilitary organizations. In this regard, the Committee asks the complainant organizations to send information concerning the link between these allegations and the questions dealt with in this case. The Committee also notes the reports of the Public Prosecutor of the Nation relating to the measures taken to undertake investigations of acts of violence against trade unionists and the Government's reply of 27 September 2007.*

271. *With particular reference to the acts of violence, the Committee notes that since it last examined the case, trade union organizations have denounced the murder of 16 trade union leaders and members, three assaults, eight cases of threats and harassment, 15 cases of detention and two of violence against demonstrators. The Committee also notes the allegations made by the ITUC concerning the presence of paramilitary elements in the DAS, which is responsible for state intelligence and for providing trade union leaders with protection, as well as the existence of a plan to exterminate certain members of the trade union movement.*

272. *The Committee further notes that the reports provided by the Office of the Public Prosecutor refer to inter-administrative agreement No. 156 of 2006 intended to give fresh impetus to action on cases of human rights violations against trade unionists and that the agreement forms part of the implementation measures of the Tripartite Accord concluded in 2006; under the Accord, the Office of the Public Prosecutor has appointed 13 prosecutors detached with their respective work units and who will focus exclusively on investigations relating to trade unionists. The Committee notes that the Office of the Public Prosecutor pre-selected 128 of the 1,319 cases referred to in Case No. 1787, which are in the process of being verified and validated, which are to receive special attention and follow-up. Court rulings have been obtained in 37 of the 128 cases, involving 47 victims.*

273. *The Committee also notes the Government's indications containing further information on the progress made in the investigations of 59 cases that are under investigation involving 123 persons, 34 cases that are awaiting court rulings involving 77 individuals and 65 victims, and 56 cases in which rulings have been handed down with 112 persons convicted. The Committee further notes the information on the investigations concerning the existence of a link between the DAS and paramilitary groups, the implementation of Justice and Peace Act No. 975 and the detention and prosecution of trade union leaders and members.*

274. *Firstly, the Committee considers that whenever acts of violence occur in which the victims are trade union leaders or members in the exercise of their functions and rights, the situation has to be considered serious and in this respect it recalls, as it has since the*

beginning of this case, that the rights of workers' and employers' organizations can only be exercised in a climate that is free of violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 44].*

275. *In this respect, the Committee deeply regrets that the Government has not provided its observations on the recent acts of violence committed against trade unionists (murders, assaults, disappearances, violence against demonstrators), the measures of protection adopted for threatened trade union leaders and their families and the measures adopted to prevent future acts of violence against them. The Committee requests the Government to report without delay on the measures adopted in relation to these acts of violence and threats denounced in the new allegations made in relation to the present case and the measures taken to prevent future acts of violence against trade unionists and their families.*

276. *With regard to the progress made in the investigations, the Committee notes that, according to the reports of the Office of the Public Prosecutor, rulings have been handed down in 37 cases, involving 47 victims, in the context of the 128 cases of violence against trade unionists pre-selected by the Office of the Public Prosecutor for examination. The Committee nevertheless regrets that the report makes no reference to the identities of the victims or to the nature of the violence suffered by them; nor is information provided about those guilty of such acts, their origin and motives. The Committee further notes that, according to the report, 13 prosecutors have been appointed who will be assigned exclusively to the judicial investigations relating to trade unionists, that they are currently carrying out missions, gathering evidence and reactivating cases that have been shelved or set aside, and that two specialized criminal courts have been established to relieve the pressure with a view to dealing with the cases concerning trade unionists denounced in the present case.*

277. *The Committee further notes that a subsequent communication from the Government contains a table showing the progress achieved in the investigations. The Committee observes that the table shows that 59 cases are being investigated with 123 persons under investigation, 34 cases involving 77 persons who have been charged and 65 victims are awaiting a ruling, and rulings have been handed down in 56 cases in which 112 persons were convicted. However, the Committee is not able to determine from the information provided by the Government whether these new cases of progress in the investigations are to be added to those enumerated by the Office of the Public Prosecutor, or already include the latter cases. Nor is it able to determine whether the cases relate to crimes against trade union victims, or those responsible, and particularly whether they include specific armed groups. The Committee expects that the measures adopted will lead to positive results in a greater number of investigations, which should cover both the 128 pre-selected cases, as well as the remaining existing cases, and it requests the Government to provide it with detailed information on the progress achieved in each of the investigations under way, with an indication of whether they relate to trade union victims, those responsible for the acts, and particularly whether they involved specified armed groups, and their motives, and to continue to take all the necessary measures to bring an end to the intolerable situation of impunity.*

278. *With reference to the allegations made by the ITUC concerning the existence of a close link between paramilitary groups and the DAS, which is responsible for providing protection to trade union leaders and members, the Committee recalls that these allegations were already made in the previous examination of the case and are elaborated in greater depth on this occasion. According to the allegations, the DAS has links with paramilitary elements and has formulated a plan to exterminate certain members of the trade union movement, some of which appear on a list containing the names of certain trade union*

leaders who were the victims of the acts of violence denounced in the present case. The Committee notes the Government's indication that it took the following measures: it requested the resignation of the Director of the DAS and declared void the appointment of the Deputy Director; it made public the information on the irregularities observed and launched the corresponding independent disciplinary and penal investigations by the Procurator-General and the Public Prosecutor; it established an independent commission with six members to establish the causes of the crisis and to make recommendations. The Committee notes that the above commission recommended the maintenance of the DAS, but considered, among other measures, that a national intelligence plan should be formulated and that responsibility for protecting persons at risk (who include trade unionists) should be transferred to the national police. The above commission also reiterated the need for the Procurator-General and the Public Prosecutor to achieve results as soon as possible with regard to the charges that have been made and which are still under investigation.

279. *With particular reference to the protection of trade unionists, the Committee notes the Government's indication that it is planned to transfer the protection programme from the Ministry of the Interior to the police. The Government emphasizes that the protection of trade union leaders is determined on the basis of the recommendations of the Risk Evaluation and Regulation Committee (CRER), which includes representatives of trade unions. The Committee notes the Government's indication that, under the terms of the provisions respecting the DAS and the legislation that is in force, the information used by the CRER is confidential and that any irregular use of such information is sanctioned and penalized.*

280. *With regard to the alleged existence of a list of persons who are to be eliminated by paramilitary groups, the Committee notes the Government's indication that the investigations carried out have not established the existence of this list.*

281. *The Committee nevertheless observes that it cannot be determined from the Government's indications whether the investigations that are being carried out on the DAS include measures to determine whether the allegations relating to the existence of a plan to exterminate members of the trade union movement are well-founded. The Committee emphasizes the extreme gravity of these allegations. Under these conditions, the Committee requests the Government, in the context of the investigations that are being carried out by the Public Prosecutor and the Procurator-General concerning the alleged relations between the DAS and paramilitary groups, to take the necessary steps to determine conclusively: (1) whether there was a violation of the legislation and the provisions governing the DAS in relation to the confidentiality of information concerning trade union leaders, and particularly whether this took the form of the divulgence of such information to paramilitary groups; (2) whether the divulgence of such information corresponded to a plan for the elimination of the trade union movement, the victims of which include murder victims who are on the list provided by the ITUC; (3) who was responsible for this violation; and (4) what was the extent of the participation of the DAS in these acts. The Committee urges the Government to ensure that these investigations are carried out on an urgent basis and expresses the firm hope that they will lead to clear results and that, where the allegations are found to be true, they will identify those responsible and prosecute and punish those who are guilty. The Committee requests the Government to provide full information on the investigations that are under way and their outcome.*

282. *Taking into account the planned transfer of the protection programme for trade union leaders to the national police, the Committee requests the Government to take measures without delay to provide adequate protection to all those trade unionists who so request, in which they should have full confidence.*

283. *With reference to the mass detentions of trade unionists alleged by FENSUAGRO in its communication of June 2007, as illustrated in a table, the Committee observes that the Government has not provided information in this connection. The Committee requests the Government to indicate whether these detentions are based on orders issued by the judicial authorities, on the reasons for such orders and on developments in the related judicial processes.*

284. *In relation to Justice and Peace Act No. 975, intended to achieve the collective and individual reincorporation into civilian life of the members of clandestine armed groups, its impact on the rights of the victims to truth, as well as the pending cases of murders and violence against trade unionists, the Committee notes the information provided by the Government according to which over 30,000 members of the Self-defence Units of Colombia (a paramilitary group) have been demobilized. The Committee also notes that, according to the Government, this is the first demobilization process which requires total truth from those who are demobilized and guarantees the rights of victims to justice and comprehensive compensation; that the leaders of the AUC groups are detained in high-security prisons; and that more judges and employees have been appointed to deal with the prosecution of those responsible. The Committee further notes that 2,978 investigations are under way (the number of applicants under the Act), with many being detained and that statements have been taken from those presumed responsible, investigations involving exhumation and the provision of information to the victims. The Committee nevertheless observes that the information provided by the Government does not show the impact of the new Act in the cases of violations of the human rights of trade unionists referred to in the present case. Under these conditions, the Committee requests the Government to provide information on the impact in practice of the Justice and Peace Act on the pending cases of murders and violence against trade unionists which occurred both prior to the entry into force of the Act and following its entry into force, as well as the influence of the Act on the general climate of violence against trade union leaders and members.*

285. *The Committee notes that the Government has not provided any information on the allegations relating to the existence of the so-called "Operation Dragon" plan to eliminate various trade union leaders, in relation to which the Government indicated previously that both the Office of the Public Prosecutor and that of the Procurator-General have initiated investigations. In view of the fact that this is a very important issue on which the Committee should be provided with detailed and up to date information by the Government, it urges the Government to provide its observations on this matter without delay.*

286. *Finally, the Committee requests the Government to provide its observations without delay concerning the communications dated 16 August and 13 September 2007 from the CUT and the ITUC, respectively, which were included in the section on new allegations in the corresponding parts of the report, as well as in relation to the communication of the WFTU dated 13 August 2007.*

The Committee's recommendations

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

(a) In general, the Committee considers that in view of the persistence of acts of violence of which trade union leaders and members are the victims in the exercise of their functions, the situation is extremely grave.

(b) With regard to the progress of the investigations and the information provided by the Office of the Public Prosecutor and the Government, the Committee takes note of certain encouraging steps taken such as the creation of a sub-unit for trade union matters and expects that the measures adopted will lead to positive outcomes in a greater number of investigations, which should cover both the 128 pre-selected cases, as well as the other existing cases, and it urges the Government to provide it with detailed information on the progress made in each of the investigations under way, where they relate to trade union victims, on those responsible for such acts, particularly in the case that they are specific armed groups, and on their motives, and that it will continue to take all the necessary measures to bring an end to the intolerable situation of impunity.

(c) In relation to the alleged links between the DAS and paramilitary groups, the Committee asks the complainant organizations to send information concerning the link between these allegations and the questions dealt with in this case and requests the Government to take all the necessary measures to ensure that, in the context of the investigations that are being undertaken by the Public Prosecutor and the Procurator-General, the necessary steps are taken to reliable determine conclusively: (1) whether there has been a violation of the legislation and of the provisions governing the DAS with regard to the confidentiality of the information relating to the trade union leaders, particularly through the divulgence of such information to paramilitary groups; (2) whether the divulgence of this information corresponded to a plan for the elimination of the trade union movement, with the victims including the persons murdered who are included on the list provided by the ITUC; (3) those who were responsible for such violations; and (4) the extent of the involvement of the DAS in such acts. The Committee urges the Government to ensure that such investigations are carried out on an urgent basis and expresses the firm hope that they will achieve tangible results and, if the allegations are proven to be true, will identify those responsible and prosecute and punish those who are guilty. The Committee requests the Government to provide full information on the investigations that are under way and their outcome.

(d) In view of the planned transfer of the protection programme for trade union leaders to the national police, the Committee requests the Government to take measures without delay to provide adequate protection to all those trade unionists who so request and to ensure that such protection has the full confidence of the trade unionists concerned.

(e) The Committee further requests the Government to provide information on the measures adopted in relation to the acts of violence denounced most recently, which are contained in the section on new allegations in the present case, and on the measures intended to prevent future acts of violence against trade unionists and their families.

(f) With regard to the mass detentions of trade union members of FENSUAGRO, the Committee requests the Government to indicate whether they have their origin in orders issued by the judicial authorities and on the

reasons for such orders and the progress made in the judicial processes related to these detentions.

(g) With reference to Justice and Peace Act No. 975, intended to achieve the collective and individual reincorporation into civilian life of the members of clandestine armed groups, its impact on the rights of the victims to truth, as well as the pending cases of murders and violence against trade unionists, the Committee requests the Government to indicate the impact in practice of the Justice and Peace Act on the pending cases of murders and violence against trade unionists which occurred both prior to the entry into force of the Act and since its entry into force, as well as the influence of the Act on the general climate of violence against trade union leaders and members.

(h) The Committee urges the Government to provide without delay its observations on the allegations relating to the existence of the so-called "Operation Dragon" plan to eliminate several trade union leaders, in relation to which the Government indicated previously that both the Office of the Public Prosecutor and that of the Procurator-General have launched investigations.

(i) Finally, the Committee requests the Government to provide its observations on the communications dated 16 August and 13 September 2007 from the CUT and the ITUC without delay, respectively, which have been added to the section on new allegations in the corresponding part of the report, as well on the communication from the WFTU dated 13 August 2007.

CASE NO. 2355

INTERIM REPORT

Complaints against the Government of Colombia
presented by
— the Single Confederation of Workers of Colombia (CUT)
— the General Confederation of Labour (CGT)
— the Confederation of Workers of Colombia (CTC)
— the Petroleum Industry Workers' Trade Union (USO)
— the Association of Managers and Technical Staff of the Colombian Petroleum Industry (ADECO)
— the National Trade Union of Workers of Petroleum, Petrochemical and Related Contractors, Services Subcontractors and Activities (SINDISPETROL)
— the International Trade Union Confederation (ITUC) and
— the World Federation of Trade Unions (WFTU)

Allegations: The complainants allege that after four months of meetings to negotiate a list of claims with the ECOPETROL SA enterprise, the administrative authority convened a compulsory arbitration tribunal; subsequently a strike began and was declared illegal by the administrative

authority; in this context, the company dismissed more than 200 workers including many trade union officials. Furthermore, the National Trade Union of Workers of Petroleum, Petrochemical and Related Contractors, Services Subcontractors and Activities (SINDISPETROL) alleges the dismissal of a number of workers two days after the declaration of the establishment of the trade union

288. The Committee last examined this case at its November 2006 meeting [see 343rd Report, paras 428–483, approved by the Governing Body at its 297th Session]. The Association of Managers and Technical Staff of the Colombian Petroleum Industry (ADECO) presented new allegations in a communication of 28 May 2007; the Single Confederation of Workers of Colombia (CUT) sent new allegations in a communication dated 5 February 2007. The World Federation of Trade Unions (WFTU) sent new allegations in a communication of 16 August 2007.

289. The Government sent its observations in communications of 21 March, 30 April and 6 July 2007.

290. 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. Previous examination of the case

291. On last examining the case, the Committee made the following recommendations [see 343rd Report, para. 483]:

(a) The Committee trusts that the interim recommendations it had formulated in its 337th Report, and approved by the Governing Body in its 293rd Session (June 2005) will be implemented.

(b) The Committee once again requests the Government to take steps to make the necessary amendments to legislation (in particular section 430(h) of the Substantive Labour Code) so as to allow strikes in the petroleum sector with the possibility of providing for the establishment of a negotiated minimum service with the participation of the trade unions, the employers and the public authorities concerned. It requests the Government to keep it informed of any measure adopted in this regard.

(c) The Committee once again requests the Government to take the necessary steps to modify section 451 of the Substantive Labour Code so that responsibility for declaring a strike illegal lies with an independent body which has the confidence of the parties involved. In this regard, the Committee suggests that the Government examine the possibility of the administrative authority applying to an independent body such as the judicial authority whenever it considers a strike to be unlawful. The Committee requests the Government to keep it informed in this regard.

(d) The Committee urges the Government to take steps to prevent the dismissal of the 104 workers reinstated at ECOPETROL SA pursuant to the ruling of the voluntary arbitration tribunal, as a consequence of the strike on 22 April 2004, and to annul the 11 dismissals that have already been ordered. The Committee requests the Government to keep it informed in this regard.

(e) As regards the legal proceedings still pending in relation to the 11 other dismissed trade union leaders (according to the Government, there were only seven), with the Government reporting that three cases are being processed and that in one case (that of Mr Nelson Enrique Quijano), the dismissal was confirmed, due to participation by the worker in the illegal work stoppage, the Committee requests the Government to keep it informed of the cases pending concerning the three dismissed trade union leaders. In the case of Mr Quijano, taking into account that his dismissal was based on legislation that does not conform to the principles of freedom of association, the Committee requests the Government to take steps to have him reinstated without delay and, if reinstatement is not possible, to ensure that he is fully compensated.

(f) As regards Mr Suárez and Mr Palma who, according to the complainants, have been in custody on charges of conspiracy to commit offences and terrorism since 3 June and 11 June 2004 respectively, the Committee requests the Government to supply information on the charges and the status of the proceedings instituted against them.

(g) As regards the new allegations presented by SINDISPETROL, in relation to the dismissal of the founding members of the trade union five days after it had been established and the pressure exerted on other members of the executive body, leading them to relinquish their trade union duties, the Committee requests the Government to supply its observations in this respect.

(h) As regards the allegations presented by the USO and SINDISPETROL concerning the refusal by ECOPETROL SA to engage in collective bargaining, the Committee requests the Government to send its observations in this respect without delay.

B. New allegations

292. In its communication of 5 February 2007, the CUT alleges that, on 21 January 2005, the arbitration tribunal issued a ruling ordering the reinstatement of 104 workers, with 34 workers remaining dismissed. Of the 104 reinstated workers, 37 were brought before the Domestic Disciplinary Monitoring Board and had their dismissals confirmed and were barred from holding public posts for ten, 11 or 12 years and 45 others were dismissed in the first instance. Moreover, administrative procedures have been initiated against workers for participation in the strike, despite the fact that they were not sanctioned at any time during that action.

293. In its communication dated 28 May 2007, the Association of Managers and Technical Staff of the Colombian Petroleum Industry (ADECO) alleges that the enterprise ECOPETROL SA refuses to bargain collectively with the trade union organization, despite the lists of claims presented on 2 December 2005 and in May 2006. In July 2006, owing to the failure of the direct settlement phase, the case was referred to a compulsory arbitration tribunal, which has not, as yet, been constituted. ADECO alleges, however, that the enterprise did bargain with the USO, concluding a collective agreement in July 2006. The complainant organization argues that, given that at present none of the trade unions within the enterprise enjoy majority support, they should each be allowed to bargain separately, while representing their membership. Moreover, the enterprise maintains a regime of extra-legal bonuses, established through a collective accord with the non-unionized staff members and staff members who give up trade union membership. This regime is more attractive than the collective agreements. This means that unionized workers have not had a wage increase or adjustment to take into account the effects of inflation for the years 2003 and 2004, unlike non-unionized staff members.

294. In its communication of 16 August, the WFTU refers to the death threats made by members of a paramilitary group against the Chairperson of the USO.

C. The Government's reply

295. In its communications dated 21 March, 30 April and 6 July 2007, the Government sends a copy of the action for protection of constitutional rights (*tutela*) brought by the Colombian Commission of Jurists (CCJ) on behalf of several workers dismissed from ECOPETROL. The action was received by the Sectional Council of the Judicature of Cundinamarca and is currently pending a decision. Moreover, the Government sends the following observations. As to item (a) of the recommendations, concerning implementation of all the recommendations made by the Committee in its 337th Report, of June 2005, (laid out in the recommendations that follow), the Government refers to the observations it made on that occasion.

296. As to item (b) of the recommendations, the Government refers to its previous statements to the effect that the concept of essential public services was defined in ruling No. C-450/95 of the Constitutional Court. This ruling was based on general interest, it being held that the exploitation, refining and transportation of petroleum and its derivatives are an essential public service, in light of which the rights of citizens are protected, in particular those of users of the abovementioned services who may be affected by the interruption of those services. The Government believes that the State must guarantee the continuous provision of essential public services, given that their interruption could have a serious effect on the rights of the citizens, rights that are held to be fundamental. The Government refers to the article entitled "ILO principles concerning the right to strike", *International Labour Review*, Vol. 117 (1998) – on criteria regarding the issue of essential services in the strict sense of the term , in which it is stated that "Over time, the supervisory bodies of the ILO have brought greater precision to the concept of essential services in the strict sense of the term (for which strike action may be prohibited). In 1983, the Committee of Experts defined such services as those 'the interruption of which would endanger the life, personal safety or health of the whole or part of the population' (ILO, 1983b, paragraph 214). This definition was adopted by the Committee on Freedom of Association shortly afterwards. Clearly, what is meant by essential services in the strict sense of the term 'depends to a large extent on the particular circumstances prevailing in a country'". According to the Government, the Constitutional Court based its pronouncement that the activities covered by section 450(h) of the Substantive Labour Code were essential, on this definition. In this way, taking into account the particular conditions affecting Colombia, the Constitutional Court, having examined the issue of what constitutes an essential public service and in particular the essential nature of the activities making up the public service provided by ECOPETROL SA, ruled that these activities constituted an essential public service. It should be pointed out that rulings issued by this Court in constitutional proceedings have an *erga omnes* effect and are therefore compulsory.

297. Section 53 of the political Constitution of 1991 covers the concept of essential services as set out by the supervisory bodies of the ILO, in that it aims to remove the right to strike in the case of such services while maintaining the link with the traditional Colombian legal concept of public services.

298. As to item (c) of the recommendations, the Government shares the Committee's belief that this criterion of independence is essential to the exercise of freedom of association. The Government maintains its earlier position, observing that there are no provisions within Conventions Nos 87 and 98 preventing the legality of a work stoppage being determined by a competent government agency (the ministry). If the Government is answerable for Conventions, then there are no grounds for arguing that it should not be the Government that makes the said determination. The Government recognizes the importance of the Committee's statement and accepts that the ministry should be acting independently when declaring a stoppage to be illegal, in that it must limit itself to objectively establishing what the situation is. The Government emphasizes that the legality of the ministry's rulings is

checked by the administrative judicial authority, the competent body for determining the legality of rulings, this notion – per se – being indissolubly linked to the criterion of independence referred to by the Committee. In order to avoid the abuse of the right to strike, the legislator left the power to declare strikes illegal in the hands of the executive.

299. As to item (d) of the recommendations, in which the Committee requested the Government to take steps to prevent the dismissal of the 104 workers reinstated pursuant to the ruling of the arbitration tribunal, as a consequence of the strike on 22 April 2004, the Government clarifies that, in line with the terms of Act No. 734 of 2002, ECOPETROL cannot deviate from the legal and constitutional provisions which govern the exercise of its functions. Moreover, the Government reiterates that the initiation and evolution of disciplinary proceedings dealt with by the competent authority are the legal consequence of compliance with an arbitration award of 21 January 2005 handed down by the ad hoc voluntary arbitration tribunal, which, in some cases, expressly ordered that reinstatement be carried out in line with the Single Disciplinary Code, as stated in sections Nos 6 and 7 of the decision clauses of the said arbitration award. Although, in certain cases, such disciplinary procedures resulted in the termination of individual contracts, this was not the wish of ECOPETROL SA as employer in the light of the Substantive Labour Code, but rather the outcome of the respective disciplinary procedure carried out by the legally competent judge and based on the evidence presented to that judge, whose decision the enterprise had to respect. The Government emphasizes that non-observance of the legal provisions would mean that the public servants responsible for exercising the disciplinary power of the State within ECOPETROL SA had failed in their duties and responsibilities (with all the legal consequences that this entails), as well as openly affecting the criteria of impartiality that must govern such actions, and, as previously mentioned, decisions handed down by the competent authority with regard to disciplinary issues must be arrived at through the correct procedure. The Government insists that the enterprise has acted entirely in line with domestic legislation and with the criteria regarding such matters established by the highest legal authorities. According to the Government, ECOPETROL's actions were the result of the decision taken by the ad hoc voluntary arbitration tribunal.

300. As to item (e) of the recommendations, the Government states that, in line with the information provided by the Head of the Labour Management Unit (E) of ECOPETROL, the legal proceedings regarding Omar Mejía Salgado, José Ibarguen and Germán Suárez Amaya are at the following stage:

- Special trade union immunity procedure of Omar Mejía Salgado. The Eighth Labour Court of the Cartagena Circuit found in favour of ECOPETROL with regard to the claims made against it by the claimant on 10 December 2004. An appeal was lodged against the ruling and is currently pending a decision of the High Court.

- Special trade union immunity procedure of José Ibarguen. The Sixth Labour Court of the Cartagena Circuit ordered that claimant José Ibarguen be reinstated in the post he occupied at the time of his dismissal, or under similar or better conditions and that he be paid all the payments owed from the time of dismissal until his reinstatement, with the corresponding increases, based on the fact that the employment contract was not interrupted from a legal point of view. This decision has been appealed against and is currently pending a ruling of the District High Court and is not final.

- Special trade union immunity procedure of Germán Suárez Amaya. Currently pending a decision of the Eighth Labour Court of the Cartagena Circuit.

301. As to the recommendation concerning Nelson Enrique Quijano, Head of the Labour Management Unit (E) of ECOPETROL, the Government states that, on 29 November 2002, a decision was taken, through resolution No. 1878 of 20 November 2002, to

terminate the individual employment contracts, unilaterally and for justifiable reasons (under the powers conferred by the Substantive Labour Code), of eleven (11) workers of the enterprise, in the Cartagena Refinery Administration Centre, in accordance with established procedure. This was a result of the active participation of the former civil servants in the collective work stoppage carried out on 19 and 20 November of the same year. These events were in no way linked to the collective work stoppage carried out by the Petroleum Industry Workers' Trade Union (USO) between 22 April and 27 May 2004, an action declared illegal by the Ministry of Social Protection through resolution No. 1116, of 22 April 2004. Thus the actions and proceedings which gave rise to the termination of the employment contracts of the eleven (11) workers began before the presentation by the USO of the list of claims at the root of the collective labour dispute on 28 November 2002. As to the Committee's request, with regard to Nelson Enrique Quijano, that the Government "… take steps to have him reinstated without delay and, if reinstatement is not possible, to ensure that he is fully compensated …", the Government states that Mr Quijano Lozada exhausted all legal channels, failing to obtain any favourable rulings. The ordinary labour court held that the dismissal of Mr Quijano was justifiable under domestic legislation and that the *amparo* appeal (appeal for protection of constitutional rights) lodged by Mr Quijano was inadmissible because the judge was not competent to hear Mr Quijano's case, in light of the fact that it is the ordinary labour judges who have competence.

302. As to item (f) concerning Mr Suárez and Mr Palma, who, according to the allegations, were arrested on charges of conspiracy to commit offences and terrorism, on 3 and 11 June 2004, the Government states that it requested the Office of the Attorney-General of the Nation to provide information which will be forwarded as soon as it has been received.

303. As to item (g) of the recommendations concerning the allegations presented by SINDISPETROL in relation to the dismissal of the founding members of the trade union five days after it had been established and the pressure exerted on other members of the executive body, leading them to relinquish their trade union duties, the Government states that the Special Directorate of Barrancabermeja initiated an administrative labour investigation (currently at the evidence-gathering stage) and that once the corresponding ruling has been issued a copy will be forwarded. The Government attaches the enterprise's response, according to which the dismissals were carried out within an ECOPETROL subcontractor, the enterprise Termotécnica Coinducatrial SA This enterprise states that in the case of the four workers who allege that they were dismissed despite being founding members of SINDISPETROL, three of them (Messrs Jiménez, Luna Mont and Ayala) were not dismissed, rather they were working under contract and had completed the work they had been contracted to carry out. The fourth worker, Mr Villareal, is not on the enterprise's database. Moreover, the enterprise also denies exerting any pressure on the workers to relinquish trade union membership.

304. As to item (h) of the recommendations concerning the refusal by ECOPETROL to bargain collectively, the Government forwards the response sent by ECOPETROL, according to which the trade union organizations failed to comply with the legal provisions concerning deadlines for the presentation of lists of claims, thus preventing the collective dispute from being initiated. In the present case, in section 173 of the USO–ECOPETROL collective labour agreement (signed on 11 June 2001 and forming part of the regime of agreements in force) the parties established a deadline for denunciations, which was neither amended nor altered by the issuing of the arbitration award of 9 December 2003 and its complementary decisions, in the light of which both the trade union organizations with the right of denunciation and the enterprise shall be subject to the deadline agreed on in the agreement. The agreement states that denunciations shall be made at least 30 days prior to expiry. Item No. 1 of the arbitration award of 9 December 2003, issued by the compulsory arbitration tribunal, convened to settle the collective labour dispute which arose with the presentation

of the list of claims by the USO on 28 November 2002 (the USO acted on behalf of ADECO), established a term of validity of two years from the date of issuance, with its duration therefore being extended to 8 December 2005. However, the USO and ADECO presented a recent denunciation on 1 December 2005, that is, in an untimely fashion, given that this was done less than 30 days before the expiry of the deadline. The legal effect of this situation was the extension of the agreement for a period of six months, until 8 June 2006, in line with the agreements and legislation in force. The enterprise states that the trade union organizations with the right to make denunciations under the agreement separately exercised that right on 4 May 2006. The enterprise adds that, on 26 July 2006, an agreement was signed between ECOPETROL and SINDISPETROL, attached to the collective labour agreement in force, demonstrating the enterprise's willingness to conclude agreements with the trade union organization and, in this way, to maintain a relationship of trust between the parties.

D. The Committee's conclusions

305. *The Committee notes the new allegations presented by CUT, ADECO and the WFTU. The Committee also notes the Government's observations concerning both the recommendations made by the Committee when it last examined the case and the new allegations presented by the trade union organizations.*

306. *The Committee recalls that the present case involves the following issues: (1) the declaration of illegality of a strike in the oil sector, owing to the fact that it is considered to be an essential sector; (2) the issuing of the abovementioned declaration by the administrative authority (Ministry of Social Protection); (3) the dismissal of 248 workers in light of the declaration of illegality, of whom 104 were reinstated in line with an arbitration award issued by a voluntary arbitration tribunal (the enterprise has applied the Single Disciplinary Code to allow it to dismiss them again); (4) the dismissal of another seven trade union officials for their participation in a previous work stoppage; (5) the detention of two trade unionists accused of conspiracy to commit offences and terrorism; and (6) the alleged refusal on the part of the enterprise to bargain collectively with the USO, ADECO and SINDISPETROL and the dismissal of the founding members of the latter trade union organization.*

307. *Summing up the circumstances surrounding the present case, the Committee recalls that, according to the allegations and the Government's observations, on 22 April 2004, the USO called for a strike within the enterprise, following a long-running dispute which began in December 2002 with the presentation of a list of claims by the USO and the partial denunciation of the collective agreement by the enterprise (it not being possible to reach a direct settlement concerning either of these issues, a situation which gave rise to the appointment of a compulsory arbitration tribunal). Unhappy with the situation, the USO declared the abovementioned strike, which was declared illegal on the same day by the Ministry for Social Protection. Between 30 April and 15 May 2004, the enterprise ECOPETROL SA terminated 248 employment contracts. Many trade union members and officials were dismissed. On 26 May 2004, an agreement was concluded putting an end to the dispute. This agreement consisted, in particular, of a commitment by the enterprise to annul the administrative labour actions against the workers who had not been notified of these actions and the establishment of a new voluntary arbitration tribunal to decide on the workers' claims. This tribunal was constituted on 12 August 2004 and issued an award on 21 January 2005. This final ruling ordered the reinstatement of 104 workers, compensation without reinstatement for 22 workers, retirement for 87 workers and the dismissal of 33 workers. Under this award, ECOPETROL was ordered to reinstate the dismissed workers while it was being determined whether they had participated in the strike that was declared illegal and, as a consequence, whether there were grounds for the*

termination of their employment contracts, in which event the enterprise would be free to dismiss the workers again.

308. *As to the Committee's request that the Government take steps to make the necessary amendments to legislation (in particular section 430(h) of the Substantive Labour Code) so as to allow strikes in the petroleum sector with the possibility of providing for the establishment of a negotiated minimum service with the participation of the trade unions, the employers and the public authorities concerned, the Committee observes that the Government reiterates its previous observations and considers that the petroleum industry constitutes an essential public service for which the right to strike may be prohibited in order to protect the general interest, an argument supported by the jurisprudence of the Constitutional Court. In this regard, the Committee reiterates its previous statements, made when the case was last examined (see para. 469 ff.). In this regard, in line with the principles it has set out on a number of occasions, strikes may only be banned in cases where there exists "a clear and imminent threat to the life, personal safety or health of the whole or part of the population", i.e. in services considered essential in the strict sense of the term. Moreover, the Committee has decided on many occasions that the petroleum sector does not display the characteristics necessary for it to be considered as an essential service in the strict sense of the term [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 581 and 587]. The above does not prevent a minimum service being imposed, given that this is a strategic service, of vital importance to the economic development of the country. In this regard, the Committee reiterates that "the establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance" [see* ***Digest****, op. cit., para. 606]. The Committee is of the opinion that some of the abovementioned scenarios could apply to the petroleum sector. Under these circumstances, while taking due note of the Government's repeated explanations of the specific circumstances in the country, the Committee once again urgently requests the Government, in consultation with the representatives of workers' and employers' organizations, to take steps to make the necessary amendments to legislation (in particular section 430(h) of the Substantive Labour Code) so as to allow strikes in the petroleum sector with the possibility of providing for the establishment of a negotiated minimum service following full and frank consultations with the participation of the trade unions, the employers and the public authorities concerned. The Committee requests the Government to keep it informed of any measure adopted in this regard.*

309. *As to the Committee's request that the Government take the necessary steps to modify section 451 of the Substantive Labour Code so that responsibility for declaring a strike illegal does not lie with the Government but with an independent body which has the confidence of the parties involved, the Committee notes the Government's response in which it reiterates in essence the observations presented when the case was last examined. The Committee reiterates that responsibility for declaring a strike or work stoppage illegal should lie not with the Government but with an independent body which has the confidence of the parties involved, particularly in those cases where the Government is party to the dispute [see* ***Digest****, op. cit,. paras 628 and 629], the judicial authority being best placed to act as an independent authority. In this regard, the Committee reiterates that section 451 of the Substantive Labour Code does not conform to the principles of freedom of association. Given these circumstances, the Committee once again urgently requests the Government to take the necessary steps to modify the abovementioned provision so that responsibility for declaring a strike illegal lies with an independent body which has the confidence of the parties involved. As regards the reference by the Government to the*

possibility of lodging an appeal against government rulings declaring a strike to be illegal, the Committee suggests that the Government explore the possibility of the administrative authority applying to an independent body such as the judicial authority whenever it considers a strike to be unlawful. The Committee requests the Government to keep it informed in this regard.

310. *As to the 104 workers reinstated in light of the decision of the arbitration tribunal of 21 January 2005, whom the enterprise proceeded to dismiss yet again having concluded that the arbitration award authorized it to apply the Single Disciplinary Code if it could be shown that the workers had participated in the strike that was declared illegal, the Committee had requested the Government to take measures to prevent those dismissals, taking into consideration the fact that they were based on legislation not in line with the principles of freedom of association. The Committee regrets to note that according to the new allegations presented by the CUT, the enterprise has already dismissed 37 workers, who have been barred from taking up posts in the public service for more than ten years, and a decision has been taken to dismiss another 45 workers. The Committee notes that the Government reiterates the observations it made when the case was last examined and sends a copy of the action for protection of constitutional rights* (tutela) *brought by several ECOPETROL workers before the Council of the Judicature.*

311. *The Committee is of the opinion that the above constitutes a new violation of the principles of freedom of association and recalls that practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices [see* ***Digest****, op. cit., para. 803]. Moreover, the Committee has on a number of occasions expressed the opinion that the use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association [see* ***Digest****, op. cit., para. 666]. Under these conditions, the Committee urges the Government to take steps to prevent the dismissal of the 104 workers reinstated at ECOPETROL SA in compliance with the ruling of the voluntary arbitration tribunal, as a consequence of the strike on 22 April 2004, and to annul the 37 dismissals and the sanctions barring the workers from posts in the public service that have already been ordered and to ensure that the 45 dismissals already decided on are not carried out. The Committee requests the Government to keep it informed in this regard, in particular regarding the decision of the Sectional Council of the Judicature concerning the action for protection of constitutional rights (tutela) brought by several ECOPETROL workers.*

312. *As to the legal proceedings pending concerning the seven trade union officials dismissed (item (e) of the recommendations), the Committee requested the Government to keep it informed of the cases pending concerning the three dismissed trade union officials. In the case of Mr Quijano, taking into account that his dismissal was based on his participation in a strike declared illegal under legislation that does not conform to the principles of freedom of association, the Committee requested the Government to take steps to have him reinstated without delay and, if reinstatement is not possible, to ensure that he is fully compensated. In this regard, the Committee notes the Government's statement regarding the three cases pending to the effect that in one of the cases, the courts found in favour of the enterprise, in another an order for reinstatement was issued (in the case of the dismissal of Mr Ibaguen), with appeals currently pending against both decisions, and in the third case a court decision is still pending. As to Mr Nelson Enrique Quijano, the Committee notes that the Government reports that the judicial authority held that the dismissal of Mr Quijano was carried out in line with the legislation in force and that the amparo appeal (appeal for protection of constitutional rights) lodged was inadmissible. Once again, the Committee refers to the principles set out in previous paragraphs concerning illegal strikes and work stoppages, and in this regard taking into account that*

in the case of Mr Quijano, his dismissal was based on legislation that does not conform to the principles of freedom of association, the Committee requests the Government to take steps to have him reinstated without delay and, if reinstatement is not possible, to ensure that he is fully compensated. The Committee also requests the Government to keep it informed of the final outcome of the appeals still pending concerning the three other trade union officials dismissed, and in the case of Mr Ibaguen, the Committee requests that he be reinstated on a temporary basis as ordered by the judicial authority until a ruling has been issued concerning the appeal.

313. *As to Jamer Suárez and Edwin Palma, members of the USO, held in custody, according to the complainants, on charges of conspiracy to commit offences and terrorism since 3 and 11 June 2004, the Committee requested the Government to supply information on the charges and the status of the proceedings instituted against them. In this regard, the Committee notes the Government's statement that a request for information was made to the Office of the Attorney-General of the Nation and that this information would be forwarded as soon as it was received. The Committee recalls that when the case was last examined the Government had already stated that it was awaiting information from the Office of the Attorney-General. The Committee observes that the case involves the detention of two persons for over three years and recalls that the arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards [see* ***Digest****, op. cit, para. 75]. In these conditions, the Committee again requests the Government to supply information without delay on the charges and the status of the proceedings instituted against Mr Suárez and Mr Palma, and to ensure that all the guarantees of a normal judicial procedure are in place and to keep it informed in this regard.*

314. *As to the allegations presented by SINDISPETROL referring to the dismissal of the founding members of the trade union five days after it had been established and two days after the initiation of the trade union organization's registration procedure and notification of the enterprise ECOPETROL SA and its contractors of the establishment of the trade union, and to the pressure exerted on other members of the executive body, leading them to relinquish their trade union duties, the Committee notes the Government's statement that the Special Directorate of Barrancabermeja initiated an administrative labour investigation (currently at the evidence-gathering stage) and that the enterprise Termotécnica Coindustrial SA, an ECOPETROL contractor employing members of SINDISPETROL, denied exerting any pressure on workers to resign from the trade union and stated that three of the workers were not dismissed, rather they had been contracted to carry out a specific task and when this work had been completed their contracts were terminated. The enterprise had no record of the fourth worker. The Committee requests the Government to keep it informed concerning the administrative labour investigation initiated by the Special Directorate of Barrancabermeja.*

315. *As to the allegations presented by the USO and SINDISPETROL regarding the refusal by the enterprise ECOPETROL to bargain collectively, the Committee notes that the Government sends the enterprise's response, which states that collective bargaining could not be carried out with the USO in December 2005 because the trade union organization had presented a list of claims when the deadline established under the collective agreement in force had expired, but that in May 2006, the USO and ADECO independently presented a new list of claims. The enterprise also attaches a copy of an accord concluded with SINDISPETROL which is attached to the collective agreement in force.*

316. *Moreover, the Committee notes the new allegations made by ADECO to the effect that, on 26 July 2005, ECOPETROL signed a collective agreement with the USO but that it refuses to bargain with ADECO and that in light of the failure of the direct settlement stage, the matter was referred to an arbitration tribunal which has, as yet, not been constituted. The*

Committee notes that according to these allegations none of the trade unions within the enterprise currently enjoys majority support and that, as a consequence and in line with legislation, they should all be able to bargain on behalf of their members. The Committee also notes that the complainant organization alleges that the enterprise signed a collective accord with the non-unionized workers and with workers relinquishing trade union membership which offers more advantages than the collective agreements in force. The Committee regrets that the Government has not sent its observations on these latest allegations, presented over a year ago. In this regard, as to the conclusion of a collective agreement with one of the minority trade union organizations and not with the other, the Committee recalls that if there is no union covering more than 50 per cent of the workers in a unit, collective bargaining rights should nevertheless be granted to the minority unions in this unit, at least on behalf of their own members [see ***Digest****, op. cit., para. 977]. In these conditions, the Committee requests the Government to keep it informed as to the outcome of the negotiations between the USO and ECOPETROL and, if appropriate, to confirm the recent conclusion of a collective agreement and to take the measures necessary to allow ADECO to bargain collectively with ECOPETROL on behalf of its members. The Committee requests the Government to keep it informed in this regard.*

317. *As to the conclusion of collective accords with the non-unionized workers or those relinquishing trade union membership which offer better terms than the collective agreements, the Committee insists, as it has done in previous cases involving Colombia, that the principles of collective bargaining must be respected taking into account the provisions of Article 4 of Convention No. 98 and that collective accords should not be used to undermine the position of the trade unions [see 324th Report, Case No. 1973, 325th Report, Case No. 2068 and 332nd Report, Case No. 2046]. As a consequence, the Committee requests the Government to take the necessary measures to ensure that collective accords are not signed with non-unionized workers to the detriment of collective bargaining and collective agreements within the enterprise ECOPETROL SA and to keep it informed of any developments in this regard.*

318. *As to the allegations presented by the WFTU, taking into consideration the fact that they involve death threats against a trade union official and that such issues are already being examined within the framework of Case No. 1787, these allegations will be examined within that same framework.*

The Committee's recommendations

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

(a) While taking due note of the Government's repeated explanations of the specific circumstances in the country, the Committee once again requests the Government, in consultation with the representatives of workers' and employers' organizations, to take steps to make the necessary amendments to legislation (in particular section 430(h) of the Substantive Labour Code) so as to allow strikes in the petroleum sector with the possibility of providing for the establishment of a negotiated minimum service following full and frank consultations with the participation of the trade unions, the employers and the public authorities concerned. It requests the Government to keep it informed of any measure adopted in this regard.

(***b) The Committee once again urgently requests the Government to take the necessary steps to modify section 451 of the Substantive Labour Code so that responsibility for declaring a strike illegal lies with an independent body***

which has the confidence of the parties involved. As regards the reference by the Government to the possibility of lodging an appeal against government rulings declaring a strike to be illegal, the Committee suggests that the Government explore the possibility of the administrative authority applying to an independent body such as the judicial authority whenever it considers a strike to be unlawful. The Committee requests the Government to keep it informed in this regard.

(c) The Committee urges the Government to take steps to prevent the dismissal of the 104 workers reinstated at ECOPETROL SA pursuant to the ruling of the voluntary arbitration tribunal, as a consequence of the strike on 22 April 2004, to annul the 37 dismissals and sanctions barring the workers from public posts that have already been ordered and to ensure that the 45 dismissals already decided on are not carried out. The Committee requests the Government to keep it informed in this regard, in particular concerning the decision of the Council of Judicature on the (*tutela*) action for protection of constitutional rights brought by the ECOPETROL workers.

(d) As regards the legal proceedings still pending in relation to the seven dismissed trade union leaders, the Committee taking into account that in the case of Mr Quijano, his dismissal was based on legislation that does not conform to the principles of freedom of association, requests the Government to take steps to have him reinstated without delay and, if reinstatement is not possible, to ensure that he is fully compensated. The Committee also requests the Government to keep it informed of the final outcome of the appeals still pending concerning the three other trade union officials dismissed, and in the particular case of Mr Ibaguen, the Committee requests that he be reinstated on a temporary basis as ordered by the judicial authority until a ruling has been issued concerning the appeal.

(e) As regards Mr Jamer Suárez and Mr Edwin Palma, USO members who, according to the complainants, have been held in custody on charges of conspiracy to commit offences and terrorism since 3 June and 11 June 2004 respectively, the Committee once again requests the Government to supply information without delay on the charges and the status of the proceedings instituted against them and to ensure that all the guarantees of a normal judicial procedure are in place and to keep it informed in this respect.

(f) As regards the allegations presented by SINDISPETROL in relation to the dismissal of the founding members of the trade union five days after it had been established and two days after initiating the process of registering the trade union and informing ECOPETROL SA and its contractors of its establishment, and to the pressure exerted on other members of the executive body, leading them to relinquish their trade union duties, the Committee requests the Government to keep it informed with regard to the administrative labour investigation initiated by the Special Directorate of Barrancabermeja.

(g) The Committee requests the Government to keep it informed regarding the outcome of the negotiations between the USO and ECOPETROL and, if appropriate, to confirm the recent conclusion of a collective agreement and

to take the measures necessary to allow ADECO to bargain collectively with the enterprise on behalf of its members.

(h) As to the conclusion of collective accords with non-unionized workers or those relinquishing trade union membership which offer better terms than the collective agreements, the Committee requests the Government to take the necessary measures to ensure that collective accords are not signed with non-unionized workers to the detriment of collective bargaining and collective agreements within the enterprise ECOPETROL SA and to keep it informed of any developments in this regard.

CASE NO. 2356

INTERIM REPORT

Complaints against the Government of Colombia
presented by
— the National Union of Public Employees of the National Service for Training SENA (SINDESENA)
— the Union of Employees and Workers of SENA (SINDETRASENA)
— the Single Confederation of Workers of Colombia (CUT)
— the Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE–UPTC) and
— the Cali Municipal Enterprises Union (SINTRAEMCALI)

Allegations: The National Union of Public Employees of the National Service for Training SENA (SINDESENA), the Union of Employees and Workers of SENA (SINDETRASENA) and the Single Confederation of Workers of Colombia (CUT) allege the collective dismissal of trade union members and trade union leaders as part of a restructuring process; the refusal to register the trade union SINDETRASENA; the refusal by the National Service for Training (SENA) to negotiate with the trade union organizations; the Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE–UPTC) alleges the dismissal of a trade unionist, and the Cali Municipal Enterprises Union (SINTRAEMCALI) alleges that the administrative authority declared a permanent assembly meeting staged within the Municipal Enterprises of Cali (EMCALI) to be illegal and that this decision gave rise to the dismissal of 49 trade union members and leaders

320. The Committee last examined this case at its June 2006 meeting and submitted an interim report to the Governing Body [see 342nd Report, paras 299–372, approved by the Governing Body at its 296th Session].

321. The Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE–UPTC) sent new allegations in communications dated 12 May and 11 and 28 August 2006. The National Union of Public Employees of the National Service for Training SENA (SINDESENA) sent new allegations in a communication of 12 June 2006. The Cali Municipal Enterprises Union (SINTRAEMCALI) sent new allegations in a communication dated 25 May 2007.

322. The Government sent its observations in communications dated 1, 6 and 15 September and 9 October 2006 and 27 June 2007.

323. Colombia 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

324. On last examining the case in June 2006, the Committee made the following recommendations [see 342nd Report, para. 372]:

(a) As to the dismissal of the eight National Union of Public Employees of the National Service for Training SENA (SINDESENA) union leaders, whose posts the Committee requested the Government to take the necessary measures to retain in order that they could carry out their functions during the restructuring process and, should this prove impossible, to transfer them to similar posts, the Committee, noting that the trade union immunity of one of these individuals has already been lifted, leading to his dismissal, requests the Government to keep it informed of any developments in the circumstances of the other seven union leaders.

(b) As to the National Service for Training's (SENA) refusal to bargain collectively, the Committee, recalling that special modalities of application may be established for collective bargaining within the public administration, but bearing in mind that collective bargaining cannot be considered to exist merely on the basis of the presentation of petitions, once again requests the Government to take the necessary measures to ensure that, in consultation with the trade union organizations concerned, legislation be amended without delay in order to bring it into line with the Conventions ratified by Colombia. The Committee requests the Government to keep it informed of any developments in this regard.

(c) As to SENA's refusal to grant trade union leave, the Committee, recalling that Paragraph 10(1) of the Workers' Representatives Recommendation, 1971 (No. 143), provides that workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions and that, whilst the workers' representative may be required to seek authorization from his/her superiors before taking time off, such authorization should not be denied without proper justification, expects that the Government will continue to grant the authorization necessary for the carrying out of trade union activities, in consultation with the organizations concerned.

(d) As to the new allegations presented by the complainant organization concerning the persecution and threatening of trade union leaders, the launch of disciplinary proceedings against the entire Regional Subdirective of Magdalena for carrying out trade union activities and the three-month sanction imposed on Mr Ricardo Correa Bernal, Vice-Chairperson of the Medellín Subdirective and Secretary of the organization's national committee, the Committee requests the Government to send its observations without delay.

(e) As to the allegations presented by the Cali Municipal Enterprises Union (SINTRAEMCALI) concerning the administrative authority's declaration that the permanent assembly meeting held on Cali Municipal Enterprises (EMCALI) premises was illegal, a declaration which subsequently led to the dismissal of 43 trade union members and six trade union leaders, the Committee requests the Government:

(i) to take the necessary measures without delay to amend article 451 of the Substantive Labour Code, in order that responsibility for declaring a strike or work stoppage illegal can be accorded to an independent body which has the confidence of the parties involved. The Committee requests the Government to keep it informed of any developments in this regard;

(ii) as to the ruling by the Ministry of Social Protection confirming the occurrence of a work stoppage and its declaration that this stoppage was illegal, the Committee requests the Government to inform it of the final outcome of the action initiated before the Council of State against resolution No. 1696 of 2 June 2004, in order to determine whether the events that took place led to a work stoppage. The Committee trusts that the Council of State will take into account the principles set forth in the preceding paragraphs concerning the requirement for investigations and the declaration of illegal strikes to be undertaken by an independent authority;

(iii) as to the dismissal of the 43 trade union members and six trade union leaders as a result of their alleged participation in a work stoppage declared illegal by the Ministry of Social Protection, currently under examination by the Council of State, the Committee requests the Government to re-examine the situation of those dismissed in the light of the future ruling of the Council of State, and to keep it informed of any developments in this regard;

(iv) as to the investigation initiated by the Office of the Public Prosecutor into acts of violence, the Committee requests the Government to keep it informed of the outcome of this investigation;

(v) as to the most recent allegations presented by SINTRAEMCALI concerning the launch of 462 sets of disciplinary proceedings and the pressure exerted on workers not to discuss the trade union or risk dismissal, the Committee requests the Government to take the necessary measures to guarantee EMCALI workers the ability to exercise their trade union rights freely and without fear of reprisals, to carry out an independent investigation with the confidence of both parties into the pressure, threats and disciplinary proceedings to which workers were subject, and to keep it informed in this regard.

(f) As to the non-hiring of lecturer, Ms Nilce Ariza, by the University of Pedagogy and Technology of Colombia (U.P.C.T.), the Committee requests the Government to take the necessary measures to carry out an independent investigation in order to establish whether the renewal of Ms Ariza's contract was refused on anti-union grounds and to inform the Committee of the outcome.

(g) As to the proceedings that have been initiated against the chairperson of the trade union, Mr Luis Bernardo Díaz Gamboa, on the grounds that he represented Ms Ariza, the Committee requests the Government to take measures to revoke the proceedings launched and to fully guarantee Mr Gamboa's right to carry out his trade union activities.

B. New allegations

325. In its communications dated 12 May and 11 and 28 August 2006, ASOPROFE–UPTC alleges that in the case of Ms Isabel Cristina Ramos Quintero, which has previously been examined by the Committee on Freedom of Association [see 342nd Report], the Second Labour Court of the Circuit of Tunja on 2 May 2006 ordered the university to reinstate the trade union leader and to pay her any wages and benefits owed to her as a result of its infringement of her trade union immunity. This ruling has still not been implemented. The trade union organization states that the case of Ms Ramos Quintero is identical to that of Ms Nilce Ariza Barbosa.

326. The trade union organization adds that the university dismissed Mr Gonzalo Bolívar, a temporary lecturer attached to the Faculty of Law, despite the fact that, as a member of the ASOPROFE–UPTC Claims Committee, he enjoyed trade union immunity.

327. In its communication of 12 June 2006, SINDESENA includes a copy of the judicial rulings concerning the lifting of the trade union immunity of several trade union leaders.

328. In its communication dated 25 May 2007, SINTRAEMCALI states that the Government has failed to take any steps to carry out the independent investigation requested by the Committee in its previous recommendations, nor have any measures been adopted to determine responsibility with regard to the events of 2004 which, according to the complainant organization, did not involve acts of violence. This claim was confirmed by interlocutory ruling No. 58, issued by the District Attorney's Office.

329. The complainant organization also states that the Government has failed to review the situation of the 51 workers (45 trade union members and six trade union leaders) who were dismissed. These workers have been put on a blacklist, a fact made clear to them whenever they seek employment with a public or private enterprise. Furthermore, under file No. DOVCO-2071-2005, the Office of the Official Municipal Representative of Santiago de Cali nullified the proceeding and ruled, through interlocutory order No. 470, that disciplinary proceedings should be dropped. Both these measures were in response to the dismissal of the 51 workers in a manner that violated due process by denying them their right to a defence. In the interlocutory order, the Official Municipal Representative concludes that, at the time of the events of 26, 27 and 28 of May 2004, normal services by the Municipal Enterprises of Cali (EMCALI) were not affected. The complainant organization emphasizes that at no time during the events of 2004 were services interrupted.

330. The complainant organization adds that no steps have been taken to amend article 451 of the Substantive Labour Code.

331. As to the case before the Council of State concerning resolution No. 1696 of 2 June 2004, SINTRAEMCALI states that proceedings are under way.

C. The Government's reply

332. In its communications dated 1, 6 and 15 September, 9 October 2006 and 27 June 2007, the Government sends the following observations.

333. As to subparagraph (a) of the recommendations concerning the dismissal of the seven SINDESENA trade union leaders, the Government states that definitive rulings have been handed down in the second instance with regard to three of the ongoing proceedings: in the case of Marco Tulio Ramírez Brochero, the First Labour Court of the Circuit of Riohacha, in a ruling in the first instance (handed down on 15 December 2004), and the Higher Court of the Legal District of Riohacha, in a ruling in the second instance handed down on 3 March 2005, authorized SENA to terminate the legal and regulatory relationship of the individual concerned. On that basis, SENA issued resolution No. 000795 of 13 May 2005, retiring him from service. A letter was sent to Mr Ramírez Brochero informing him that he was being retired owing to the elimination of his post, as ordered in article 8 of Decree No. 250 of 2004, and that, by law, he had the right to be transferred to an equivalent post in the public sector within the following six months or to compensation, and that he should inform the Director General of SENA of his decision in writing within the next five days. As Mr Ramírez Brochero gave no indication of his decision within that period, under the terms of article 46 of Decree No. 1568 of 1998, and article 30 of Decree No. 760 of 2005,

he was deemed to have accepted the compensation, and was accordingly paid the sum of 41,077,316 pesos through resolution No. 000922 of 1 June 2005.

334. In the case of Mr Leonel Antonio González Alzate, the Higher Court of Armenia handed down a ruling in the second instance, dated 28 November 2005, in which it refused authorization to retire the civil servant (who enjoyed trade union immunity) from service. For this reason, Mr González Alzate is still a member of staff.

335. In the case of Mr Juan Clímaco Muriel González, the Eleventh Labour Court of the Circuit of Medellín, in a ruling handed down in the first instance on 20 September 2005, and the Higher Court of Medellín, in a ruling handed down in the second instance on 2 February 2006, authorized SENA to terminate the legal relationship with the individual concerned. Consequently, SENA issued resolution No. 000636 of 29 March 2006, retiring him from service. He chose, within the legal time frame, to be transferred to another equivalent post within the following six months. As there are no equivalent vacant posts to which he could be appointed in SENA, his request was referred on 31 May 2006 to the National Civil Service Commission by letter No. 019502, in order that he might be placed elsewhere in the public service.

336. According to the Government, of the five remaining cases involving the lifting of trade union immunity, four are before the labour court of the first instance and concern Wilson Neber Arias Castillo, Edgar Barragán Pérez, Pedro Sánchez Romero, Carlos Rodríguez Pérez and Oscar Luis Mendívil Romero.

337. As regards subparagraph (b) on collective bargaining in the public sector, the Government considers that, given that this is a legislative matter, dialogue with the Committee of Experts on the Application of Conventions and Recommendations should continue.

338. With regard to subparagraph (c) concerning trade union leave, in line with information provided by the Secretary-General of SENA, a process of conciliation took place before the Eighth Labour Inspectorate of the Territorial Directorate of Cundinamarca regarding the number of periods of trade union leave SENA should grant trade union leaders per year. Most periods of leave had already been granted, but additional periods agreed as a result of conciliation have already been made official within SENA (the Government attaches a copy of this conciliation agreement).

339. As to subparagraph (d) of the recommendations concerning the allegations of persecution and threats against trade union leaders, the launch of disciplinary proceedings against the entire Regional Subdirective of Magdalena and the three-month sanction imposed on Mr Ricardo Correa Bernal, the Government states that in the case of the disciplinary proceedings conducted by SENA's internal disciplinary monitoring office, in line with its legal functions, with regard to the acts allegedly carried out by the leaders of SINDESENA in the Regional Subdirective of Magdalena, the Secretary-General of SENA stated that the disciplinary procedure had been terminated and the disciplinary investigation filed by an order dated 27 March 2006. As to Mr Ricardo Correa Bernal, the Secretary-General states that an investigation by SENA's internal disciplinary monitoring office into a probable assault on a colleague in February 2004 is under way. Through decision No. 00561 of 21 March 2006 the proceedings, from the order launching the disciplinary investigation onwards, were nullified in the second instance, without prejudice to the evidence presented. Mr Correa was informed of this decision on 24 March 2006, through letter No. 010816. The accused has been informed of the charges and invited to present a defence. The Government emphasizes that the events under investigation in the present case are in no way related to Mr Correa's status as a trade union leader, nor are they a means of trade union persecution.

340. As to subparagraph (e) of the recommendations concerning the administrative authority's declaration that the permanent assembly meeting held within EMCALI was illegal, the Government reiterates its previous position, and states that the Ministry of Social Protection is the competent body with regard to the investigation and determination of the illegality of work stoppages. The Government recalls that the events in the present case are a matter of established fact, recognized by the complainants themselves, and these accepted facts are the basis of the Government's own observations, which have not been taken into consideration by the Committee. The text of the complaint itself is, without a shadow of a doubt, incontrovertible proof of the occurrence of a series of events in relation to which, the Government reiterates, it has requested the Committee to take into consideration its statements when making its recommendations. The Government does not understand why the Committee would recommend that an investigation be carried out into whether certain events took place, when those events emerged from the complaint made to the ILO and are the basis for the request made by the Government to the Committee. It is clear that a number of workers took over the premises of EMCALI and that this action took place during working hours, that is to say, in the employer's time. No verification of these events is required beyond the recognition of their occurrence implicit in the complaint itself.

341. In the light of the above, the Government has requested the Committee to reaffirm the clear stance it has adopted in previous cases, namely, that when trade union activities are carried on in this way (in the employer's time, using the employer's staff for trade union purposes, and using the union member's position in the enterprise to put improper pressure on another employee), it is not possible for the person concerned to invoke the protection of Convention No. 98 or to contend that, in the event of dismissal, legitimate trade union rights have been infringed. The Government considers that this point lies at the very heart of the matter in question.

342. As to subparagraph (e)(ii) concerning the confirmation of the occurrence of a work stoppage and the declaration of its illegality currently before the Council of State, the Government states that it will send a copy of the respective ruling once it has been adopted.

343. As to subparagraph (e)(iv) of the recommendations concerning the investigation initiated by the Office of the Attorney-General, the Government and the Attorney-General, in accordance with the undertaking made to the ILO and the trade union organizations, are focusing their efforts on a project aimed at ensuring, through swift and sound decisions, effectiveness and efficiency with regard to investigations involving infringements of trade unionists' rights. The Government has set aside 4 billion pesos for this purpose. The project is designed to implement machinery for expediting and following up cases brought before the ILO by: (i) optimizing the investigation proceedings; (ii) processing cases and accelerating the paperwork; and (iii) carrying out a qualitative analysis of the available information and of the nature of the offences, by strengthening the National Human Rights Unit, the National Terrorism Unit and the directorates of their respective sections. The Human Rights Unit of the Office of the Attorney-General has set up a special investigation group comprising five specialist district attorneys, who will be supported by the human rights investigation group and will be responsible for 102 investigations of cases exclusively involving trade unionists.

344. As to subparagraph (e)(v) of the recommendations, the Government states that, with regard to the launch of disciplinary proceedings, article 29 of the Political Constitution provides for due process in all types of judicial and administrative proceedings. The article states that "No one may be judged except in accordance with laws that existed prior to the commission of the offence of which the individual is accused, by a competent judge or tribunal, and in accordance with all the proper formalities required in each case … Any

evidence obtained in violation of due process shall be null and void." Furthermore, the Government states that the fact that the unionized workers are the subject of disciplinary proceedings does not mean that their right to form trade unions and freedom of association will be disregarded. Lastly, the Government expresses its concern at the new allegations, bearing in mind that the trade union has not presented any evidence in support of these claims, including the assertion that pressure is exerted on workers not to discuss the trade union.

345. As to subparagraph (f) of the recommendations concerning the termination of the contract of the lecturer Ms Nilce Ariza, the Government reiterates its previous statements (the Government had stated that the contract in question was a fixed-term temporary contract, renewable subject to successful participation in a competition) and indicates that, as Ms Ariza had failed to comply with the requirements, i.e. participation in the competitive selection procedure, without any need for a special invitation to that effect, she could not take part in that procedure; this is not in any way related to her position as a trade unionist.

346. Furthermore, the Government states that the Territorial Directorate of Boyacá, through resolution No. 000085 of 30 March 2006, imposed a penalty on the University of Pedagogy and Technology of Colombia (UPTC) for infringement of the right of association, a ruling that was upheld through resolution No. 000159 of 6 June 2006 ruling on a request for review, and resolution No. 000281 of 14 August 2006 on an appeal. The Government provides copies of the resolutions concerning the refusal to grant trade union leave and facilities within the enterprise.

347. The Government also attaches a copy of the letter for information sent by the rector of the university to the Government, which refers to the situation of Ms Ariza, as well as stating, with regard to the re-examination of the situation of the lecturer Ms Isabel Cristina Ramos Quintero, that the ruling of 2 May 2006 issued by the Second Labour Court of the Circuit of Tunja is still pending an appeal.

348. As regards subparagraph (g) of the recommendations, the Government states that it is not responsible for the proceedings initiated against the Chairperson of the trade union, Mr Luis Bernardo Díaz Gamboa. The Government reminds the Committee on Freedom of Association that, according to article 113 of the Political Constitution, which addresses the separation of the three powers, the Government cannot interfere with judicial decisions. The Government attaches a copy of a communication from the Office of the Attorney-General stating that a verdict of not guilty was pronounced in the disciplinary proceedings against Mr Díaz Gamboa on 29 June 2006.

349. As to the new allegations regarding the dismissal of the lecturer Mr Gonzalo Bolívar, who was attached to the Faculty of Law of the UPTC and who enjoyed trade union immunity, the Government emphasizes that, in line with the provisions of Act No. 30 of 1992 and Decree No. 1279 of 2002, the UPTC can hire lecturers on a temporary basis.

350. Section 74 of Act No. 30 of 1992, governing the Public Higher Education Service, states that: "Temporary lecturers are employees who are required to work on a temporary basis, either full or part-time, for a period of less than one year. Temporary lecturers are neither public employees nor official workers. Their services shall be recognized through decision (…)."

351. The above provision was declared by the Constitutional Court to be enforceable. Furthermore, article 3 of Decree No. 1279, of 2002, states that "Temporary lecturers are not public teaching employees governed by special regulations, nor are they part of the university teaching career structure, and their terms of remuneration are not governed by the present decree. However, they are engaged in accordance with each university's own

regulations, subject to the terms of Act No. 30 of 1992 and other constitutional and legal provisions in force." In the light of the legal situation described above, the Higher Council of the UPTC, in exercise of its administrative powers (in particular those conferred upon it by the General Statutes of the University through Agreement No. 066 of 2005) established the regulations for the recruitment of this category of lecturer. These are contained in Agreements Nos 021 of 1993, 060 of 2002 and 062 of 2006.

352. Agreement No. 021 of 1993, amending and adopting the Statute of University Professors of the UPTC, provides for cases in which teaching staff may be engaged on a temporary basis. Article 20 states that:

> Regardless of the terms of article 15, the rector, at the request of the respective dean, may under the following circumstances engage as temporary lecturers individuals fulfilling the requirements set in article 14:
>
> (a) in order to replace members of teaching staff who are on leave, secondment or a sabbatical for the period in question (up to, but not exceeding, one year);
>
> (b) in order to fill vacant teaching posts, for up to one academic period;
>
> (c) when a teaching post has to be filled following a competitive selection process in which no suitable candidate was found to have applied;
>
> (d) when there is a need for the services of a visiting lecturer of recognized scientific, technical, humanistic, artistic and/or pedagogical merit. In this case, there is no need for the requirements set out in article 14 to be met.

353. In cases (a), (b) and (c) of the above article, candidates who have achieved the highest scores are given preference, provided that the scores are not less than 60 per cent. In no case do these temporary appointments confer the right to a permanent appointment unless the other relevant requirements have been fulfilled.

354. The Government states that the Higher Council of the UPTC subsequently enacted regulations to implement article 3, providing for the category of temporary lecturer to provide academic services on a temporary basis. Agreement No. 060 of 2002 stipulated that temporary lecturers would be appointed for a fixed term of not more than ten months in a given year.

355. The appointment of Dr Bolívar took these provisions into account. The Faculty of Law required his services for one academic period of six months, or not more than two totalling not more than ten months, it being made clear that the appointment would end without further notice, and that neither of the parties (the university or the lecturer) would continue to be bound by the original terms. The Head of the Legal Office of the university states that, as of 11 August 2006, Dr Bolívar's services were no longer required, and the law department organized a public merit-based selection process to fill first-time permanent lecturer posts, specifically including the field of criminal law. The Government emphasizes that whoever achieves the marks required to become a permanent lecturer will be awarded the post. In the present case, the academic duties previously assigned for a number of years to Dr Bolívar as a temporary lecturer would be assigned to the permanent lecturer who won the competition. Dr Bolívar thus ceased to be employed by the university because the institution did not require the services of a temporary lecturer, given that a selection process had been organized to find a permanent one. Furthermore, his employment relationship with the university was not unilaterally terminated; the fixed term set out in the various administrative acts elapsed, which meant there was no need to request judicial authorization to retire him.

356. Finally, the Government states that the Ministry of Social Protection abstained from intervening in the dispute with Dr Bolívar because the Coordinating Group for Prevention,

Inspection, Monitoring and Supervision of the Territorial Directorate of Boyacá felt that the case involved facts that should be put before the magistrates, as the Ministry cannot determine rights.

D. The Committee's conclusions

357. *The Committee notes that the questions still pending involve the following issues: (1) the restructuring process and the consequent dismissal of trade union members and leaders of SINDESENA; (2) the Ministry of Social Protection's declaration that a work stoppage carried out by SINTRAEMCALI on 26 and 27 May 2004 within EMCALI was illegal, giving rise to the dismissal of 43 workers and six trade union leaders; and (3) the non-renewal of the employment contracts of three lecturers at the UPTC, despite the fact that they enjoyed trade union immunity. The Committee notes the new allegations made by SINTRAEMCALI, SINDESENA and ASOPROFE–UPTC, which refer to the questions pending.*

Restructuring of the National Service for Training (SENA)

358. *As to subparagraph (a) of the recommendations concerning the dismissal, owing to the suppression of their posts, of eight trade union leaders of SINDESENA (of which the Committee took note during its last examination of the case of the lifting of trade union immunity and dismissal of one of them), the Committee notes that, in its last communication, the trade union organization provides copies of various judicial decisions concerning the lifting of trade union immunity. The Committee also notes that the Government states that definitive judicial rulings have been handed down with regard to three of the leaders, namely, Marco Tulio Ramírez Brochero, Mr Leonel Antonio González Alzate and Mr Juan Clímaco Muriel González. In the case of Mr Brochero, the judicial authority lifted his trade union immunity and he was subsequently dismissed. The Committee notes the Government's statement to the effect that Mr Brochero was informed that, by law, he had the right to compensation or to be transferred to an equivalent post in the public sector within the following six months. The Government states that, having failed to indicate his decision, he was paid the appropriate compensation in accordance with the relevant legislation.*

359. *In the case of Mr Leonel Antonio González Alzate, the Committee notes that the Higher Court of Armenia did not authorize the dismissal of this worker with trade union immunity and, consequently, he continues to work for SENA.*

360. *As regards Mr Juan Clímaco Muriel González, the Committee notes that the judicial authority authorized the lifting of his trade union immunity and consequent dismissal, and that he exercised his legal right to be transferred to another equivalent post within the service within the following six months, for which reason his request was referred to the National Civil Service Commission in order that he might be placed elsewhere in the public service.*

361. *The Committee notes that according to the Government, the five remaining cases involving the lifting of trade union immunity, concerning Messrs Wilson Neber Arias Castillo, Edgar Barragán Pérez, Pedro Sánchez Romero, Carlos Rodríguez Pérez and Oscar Luis Mendívil Romero, are still ongoing. The Committee requests the Government to continue to keep it informed in this regard.*

362. *As to subparagraph (b) of the recommendations concerning SENA's refusal to bargain collectively, the Committee notes that, according to the Government, this is a legislative*

matter and should be examined by the Committee of Experts on the Application of Conventions and Recommendations. In this regard, the Committee recalls that "Where national laws, including those interpreted by the high courts, violate the principles of freedom of association, the Committee has always considered it within its mandate to examine the laws, provide guidelines and offer the ILO's technical assistance to bring the laws into compliance with the principles of freedom of association, as set out in the Constitution of the ILO and the applicable Conventions." [See ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 11.] In this regard, recalling that special modalities of application may be established for collective bargaining within the public administration, the Committee once again requests the Government to take the necessary measures to ensure that, in consultation with the trade union organizations concerned, legislation be amended without delay in order to allow the employees of the public administration to bargain collectively beyond merely submitting respectful petitions, in line with the Conventions ratified by Colombia. The Committee requests the Government to keep it informed of any developments in this regard and reminds it that it may avail itself of the technical assistance of the Office. As to subparagraph (c) of the recommendations concerning SENA's refusal to grant trade union leave, the Committee notes with interest that a conciliation process was held on 27 March 2006, before the Eighth Labour Inspectorate of the Territorial Directorate of Cundinamarca. This process involved SENA and SINDESENA, which reached an agreement on the number of days off to be granted annually by SENA to trade union leaders.*

363. *As to subparagraph (d) of the recommendations concerning persecution and threats against SINDESENA trade union leaders through the launch of disciplinary proceedings against the entire Regional Subdirective of Magdalena for carrying out trade union activities and the three-month sanction imposed on Mr Ricardo Correa Bernal, Vice-Chairperson of the Medellín Subdirective and Secretary of the organization's national committee, the Committee notes the Government's statement to the effect that, through an order dated 27 March 2006 SENA's internal disciplinary monitoring office terminated the procedure and definitively closed the disciplinary investigation into the entire Regional Subdirective of Magdalena.*

364. *As to Mr Ricardo Correa Bernal, the Committee notes the Government's statement that by virtue of decision No. 00561 of 21 March 2006 the proceedings, from the order issued initiating the disciplinary investigation onwards, were nullified, and Mr Correa was informed of this fact. The Committee further notes that an investigation is currently under way concerning an assault on a colleague in February 2004; according to the Government, this matter is in no way connected to the exercise of trade union rights. The accused has been informed of the charges and invited to present a defence. The Committee requests the Government to keep it informed of the final ruling concerning this case.*

Cali Municipal Enterprises (EMCALI)

365. *As regards subparagraph (e) of the recommendations concerning the administrative authority's declaration that the permanent assembly meeting held within EMCALI was illegal, leading to the dismissal of 43 trade union members and six union leaders, the Committee notes that, firstly, the trade union organization states that the dismissal affected 45 trade union members and six leaders, that is to say, 51 workers. Secondly, the Committee notes that, in its latest communication, SINTRAEMCALI alleges that the Government has failed to adopt any measures regarding the recommendations made by the Committee when it last examined the case, and that the proceedings initiated before the Council of State against resolution No. 1696 of 2 June 2004 (issued by the Ministry of Social Protection, which declared the work stoppage to be illegal), in order to determine whether a work stoppage took place, is still pending.*

366. *Furthermore, the Committee notes that, according to the Government, the Ministry of Social Protection is the competent body with regard to investigating and determining the illegality of work stoppages, and the events which occurred are acknowledged as fact by the complainant organization itself, that is to say, the premises were taken over during working hours, and the Committee should take these circumstances into consideration.*

367. *In this regard, the Committee recalls, first, that there is a clear discrepancy in terms of the facts between the allegations presented by SINTRAEMCALI and the Government's observations. The complainant organization claims that the event was a permanent assembly meeting which did not involve a work stoppage (a claim upheld by various communications from local authorities, stating that they continued to receive uninterrupted services); the Government on the other hand maintains that there was a work stoppage and that the premises of EMCALI were taken over by force.*

368. *Secondly, the Committee recalls that its previous recommendations also referred to the legal aspects of the matter, and reiterates that responsibility for declaring a strike illegal should not lie with the Government but with an independent body which has the confidence of the parties involved. This point is even more important when events occur within public enterprises such as EMCALI in order to ensure that the authorities do not act as both judge and party to the conflict. In this regard, the Committee has on numerous occasions expressed the view that the best independent body is the judicial authority. The Committee therefore once again requests the Government to take the necessary measures to amend article 451 of the Substantive Labour Code, in order that responsibility for declaring strikes or work stoppages illegal be placed with an independent body which has the confidence of the parties involved, and to keep it informed of any developments in this regard.*

369. *The Committee further recalls that in the present case, the occurrence of a work stoppage and the declaration of illegality by the Ministry of Social Protection through resolution No. 1696 of 2 June 2004, which led to the dismissal of 45 trade union members and six union leaders for alleged participation in the said work stoppage, are being examined by the Council of State, which is the highest judicial authority in matters relating to the public administration. In this regard, the Committee observes that, more than three years after the events occurred, no judicial ruling has yet been handed down in this regard, and recalls that justice delayed is justice denied. The Committee expresses the firm hope that the Council of State will issue a ruling in the near future, and trusts that it will take into consideration the principle that the responsibility for investigations and for declaring strikes or work stoppages illegal should lie with an independent body. The Committee requests the Government to keep it informed in this regard.*

370. *As regards the 51 workers dismissed (45 trade union members and six union leaders), the Committee once again requests the Government, in the light of the ruling of the Council of State once it has been handed down, to re-examine the situation of the individuals dismissed and to keep it informed in this regard.*

371. *As to the investigation launched before the Office of the Attorney-General into the acts of violence that occurred (violent takeover of the premises, violent interventions on the part of the workers and the police), the Committee notes the information provided by the Government concerning the plan to implement machinery for expediting and following up cases involving trade unionists and the creation of the Human Rights Unit comprising five specialist attorneys. The Committee expresses its deep concern that the Government fails to provide specific information concerning the investigation launched into the violent events that occurred within EMCALI in May 2004, and requests it to do so without delay.*

372. *As to the launch of 462 separate disciplinary proceedings and the pressure placed on workers not to discuss trade union issues under threat of dismissal, with regard to which the Committee had requested an independent investigation, the Committee notes that the Government has not sent any specific information in this regard. The Committee recalls that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* ***Digest****, op. cit., para. 771]. The Committee once again requests the Government to take the necessary measures to ensure that an independent investigation is carried out into these allegations and to keep it informed in this regard.*

University of Pedagogy and Technology of Colombia (UPTC)

373. *As regards subparagraph (f) of the recommendations concerning the non-hiring of the lecturer Ms Nilce Ariza by the UPTC, the Committee notes that the Government reiterates that Ms Ariza was on a fixed-term temporary contract, renewable only subject to participation in a competitive selection process. Ms Ariza did not participate in that process (these facts were corroborated during the investigation carried out by the internal disciplinary monitoring office, under file No. OCDI-461-05), and her situation is, in the Government's view, unrelated to her status as a trade unionist.*

374. *As regards subparagraph (g) of the recommendations concerning the proceedings initiated against the Chairperson of ASOPROFE–UPTC, Mr Luis Bernardo Díaz Gamboa, on the grounds that he represented Ms Ariza, the Committee notes that Mr Díaz Gamboa was cleared by the disciplinary proceedings on 29 June 2006.*

375. *As to the new allegations made by ASOPROFE–UPTC concerning the judicial ruling ordering the reinstatement of Ms Isabel Cristina Ramos Quintero in the light of the violation of her trade union immunity (a ruling with which the university authorities have yet to comply), the Committee notes the information provided by the Government to the effect that the judicial ruling in question is still pending an appeal. The Committee requests the Government to keep it informed as to the outcome of the appeal.*

376. *As regards the alleged dismissal of Mr Gonzalo Bolívar, assigned to the Faculty of Law as a temporary lecturer, without lifting the trade union immunity he enjoyed by virtue of his membership of the ASOPROFE–UPTC Claims Committee, the Committee notes the Government's statement to the effect that Mr Bolívar had a contract as a temporary lecturer, that such contracts are renewable for periods of less than one year, at the end of which time the contractual relationship ends without notice, and that the post he occupied was opened to a competition which was won by another lecturer.*

377. *In this regard, the Committee refers to what was indicated during the previous examination of the case, when it was stated that the very nature of fixed-term temporary contracts, such as those for temporary lecturers, dictate that they expire once their term has elapsed, without any need for judicial authorization to lift trade union immunity. Under these circumstances, for the Government, it was inappropriate to request the lifting of trade union immunity because the intention was not to dismiss a worker; the contract between employee and employer simply came to an end. Under these circumstances, the Committee will not pursue its examination of these allegations.*

The Committee's recommendations

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

(a) With regard to the dismissal of eight SINDESENA trade union leaders as part of the process of restructuring SENA, noting that the Government sends information on three of the trade union leaders, the Committee requests the Government to continue to keep it informed with regard to the cases still pending regarding the lifting of the trade union immunity of the remaining five trade union leaders (Wilson Neber Arias Castillo, Edgar Barragán Pérez, Pedro Sánchez Romero, Carlos Rodríguez Pérez and Oscar Luis Mendívil Romero).

(b) As to SENA's refusal to bargain collectively, the Committee once again requests the Government to take the necessary measures to ensure that, in consultation with the trade union organizations concerned, legislation is amended without delay in order to allow employees of the public administration to bargain collectively and to bring it into line with the Conventions ratified by Colombia. The Committee requests the Government to keep it informed of any developments in this regard, and reminds it that it may avail itself of the technical assistance of the Office.

(c) The Committee requests the Government to keep it informed of the final outcome of the disciplinary proceedings against Mr Ricardo Correa Bernal, Vice-Chairperson of the Medellín Subdirective and Secretary of the organization's national committee.

(d) As to the declaration of illegality concerning a permanent assembly held by SINTRAEMCALI within EMCALI, which led to the dismissal of 45 trade union members and six union leaders:

(i) the Committee once again requests the Government to take the necessary measures to amend article 451 of the Substantive Labour Code, so that responsibility for declaring strikes or work stoppages illegal may be placed with an independent body which has the confidence of the parties involved, and to keep it informed of any developments in this regard;

(ii) the Committee expresses the firm hope that the Council of State will issue a ruling in the near future with regard to the occurrence of a work stoppage and the declaration of illegality issued by the Ministry of Social Protection in resolution No. 1696 of 2 June 2004, and trusts that the Council of State will take into account the principles set forth in the preceding paragraphs concerning the requirement for investigations and the declaration of illegal strikes to be undertaken by an independent authority. The Committee requests the Government to keep it informed in this regard;

(iii) as to the dismissal of 45 trade union members and six leaders for alleged participation in the work stoppage, the Committee once again requests the Government, in the light of the Council of State's ruling,

once handed down, to re-examine the situation of those dismissed and to keep it informed in this regard;

(iv) as to the investigation launched before the Office of the Attorney-General into the violent events that occurred, the Committee requests the Government to provide information without delay;

(v) as to the launch of 462 separate disciplinary proceedings and the pressure put on workers not to discuss trade union issues under threat of dismissal, the Committee once again requests the Government to take the necessary measures to ensure that an independent investigation is carried out into these allegations and to keep it informed in this regard.

(e) The Committee requests the Government to keep it informed of the final outcome of the appeal against the judicial ruling ordering the reinstatement of Ms Isabel Cristina Ramos Quintero.

CASE NO. 2497

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

Complaint against the Government of Colombia presented by — the Single Confederation of Workers (CUT) and — the Confederation of Pensioners of Colombia (CPC)

Allegations: The Single Confederation of Workers (CUT) and the Confederation of Pensioners of Colombia (CPC) allege that the successor companies to Pereira Public Enterprises (Pereira Waste Management SA, Pereira Telecommunications SA, Pereira Electricity SA and Pereira Water and Sanitation SA) abruptly and unilaterally suspended payment of a pension benefit which had been established under a collective agreement signed in 1963 and endorsed in subsequent collective agreements concluded in 1970, 1978, 1986, 1989, 1990, 1996 and 1997

379. The complaint is contained in a joint communication of March 2006 from the Single Confederation of Workers (CUT) and the Confederation of Pensioners of Colombia (CPC).

380. On 6 October 2006, the Government sent a communication in which it questioned the trade union nature of the complaint. This notwithstanding, the Government was invited to respond to all the questions raised in the complaint, given that the complaint referred to failure to comply with a collective agreement. The Government sent its observations in a communication of 4 September 2007.

381. Colombia 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

382. In their communication of March 2006, the CUT and the CPC indicate that: (a) the workers (mentioned by name in the communication) had worked for more than 20 years in the waste management unit of Pereira Public Enterprises (Department of Risaralda); (b) Pereira Public Enterprises had adopted two decisions by which it granted retirement pensions to those workers, in accordance with the collective agreement concluded in 1963 between Pereira Public Enterprises and the trade union; (c) in its paragraph 9, the collective labour agreement of 1970 established a pension system for retirees whereby pension benefits which had previously been granted to retirees with 20 years of service were extended to staff members with ten years of service in that company, in an amount proportionate to their period of employment; (d) the abovementioned arrangement was further endorsed in the agreements concluded in 1978, 1986, 1989, 1990, 1996 and 1997; and (e) Pereira Public Enterprises was divided into four independent companies (Pereira Waste Management SA, Pereira Telecommunications SA, Pereira Electricity SA and Pereira Water and Sanitation SA). The new companies replaced the previously existing one, retroactively assuming the obligations that it had entered into in respect of retired staff members, with each company paying retirement benefits in a timely manner in accordance with the terms and conditions set out in the collective agreements.

383. The complainant organizations add that the companies abruptly and unilaterally suspended payment of the benefit accorded under the agreement. Payments were suspended by Pereira Electricity SA in December 1998; by Pereira Waste Management SA in June 1999; by Pereira Telecommunications SA in December 1998 and by Pereira Water and Sanitation SA in June 2001.

384. The Association of Pensioners of Pereira Public Enterprises initiated legal proceedings to secure payment of the benefits. Nevertheless, the Second Labour Circuit Court of the City of Pereira acquitted the company on the grounds that, subsequent to the establishment of the pension system under the 1970 agreement, it was decided under Act No. 4 of 1976 that another month's payment would be granted in addition to the December payment; this benefit was endorsed by section 50 of Act No. 100 of 1993. The judicial authority recalls in its decision that, in accordance with section 16, paragraph 2, of the Labour Code, "when a new law establishes a benefit which has already been granted under an agreement or arbitration award, the more favourable benefit will be paid to the worker". This principle is in line with the ruling of the Pereira Judicial District High Court that, in accordance with section 50 of Act No. 100 of 1993, the payment of statutory benefits rules out the payment of benefits established by collective agreement.

385. The complainant organizations point out that, since the adoption of the abovementioned legislation, pension payments continued to be covered by collective agreements and that the pension payment was suspended recently, between 1998 and 2001, in other words a number of years after the adoption of the legislation in question.

B. The Government's reply

386. In its communication dated 6 October 2006, the Government indicates that, as the complaint in question refers to the protection of wages, it does not fall within the Committee's competence.

387. In its communication of 4 September 2007, the Government states that the non-application of the ninth point of the collective labour agreement by Pereira Public Enterprises (Pereira Waste Management SA, Pereira Telecommunications SA, Pereira Electricity SA and Pereira Water and Sanitation SA) is based on domestic legislation. In effect, section 16 of the Labour Code provides as follows: "Effect. 1. Given that labour standards concern public order, they have immediate general effect, and thus also apply to any employment contracts in force or ongoing at the time when said standards come into force, but these standards shall not be retroactive, that is to say, they shall not affect situations defined or finalized in line with previous legislation".

388. Section 16, paragraph 2, of the Labour Code, adds that "when a new law establishes a benefit which has already been granted under an agreement or arbitration award, the more favourable benefit will be paid to the worker".

389. The Government adds that, for its part, section 7 of the collective labour agreement provides as follows: "Favourability. Any future law granting the Trade Union of Workers and Employees in Public and Autonomous Services and Decentralized Institutions of Colombia (SINTRAEMSDES) or the workers more favourable benefits than those stipulated in this agreement, shall be applied by preference and in such a way as to prevent accumulation of both benefits granted under agreements and legal benefits with regard to the same matter; if the future legal benefits prove to be lower than the benefits contained in the agreement then the latter shall be applied by preference, yet again with there being no possibility of the accumulation of benefits".

390. Section 50 of Act No. 100 of 1993 provides as follows: "Monthly allowance. Old age pensioners, retirees, those having retired owing to invalidity and replacement or receiving survivor's benefits shall continue to receive each year, together with the monthly allowance for the month of November, in the first fortnight of December, a sum corresponding to an additional monthly allowance on top of their pension".

391. Section 142 of the abovementioned Act provides as follows: "Additional monthly allowance for those currently receiving a pension. Old-age pensioners, retirees, those receiving invalidity and survivors' benefits, from throughout the public, official and semi-official sectors, the private sector and the Institute of Social Security, as well as retirees and pensioners from the armed forces and the national police, shall be entitled to the recognition and payment of thirty (30) days' worth of pension corresponding to their respective regimes, which shall be included in the June monthly payment each year, as of 1994. This additional monthly allowance shall be paid by whoever is responsible for pension payments but shall not exceed fifteen (15) times the minimum monthly wage".

392. The legal framework described and the fact that the legislation contained in the sections referred to above presupposes the improvement of benefits in favour of pensioners meant the incomes of beneficiaries increased, and the abovementioned enterprises suspended the pension payment outlined in section 77 of the collective labour agreement indefinitely. The enterprises did not denounce the collective agreement, as they did not believe that they were at odds with the benefit as defined in section 77 of the collective labour agreement in force, and moreover, they did not wish to see the disappearance of the benefit established under the agreement.

393. Pereira Public Enterprises applied the law directly in favour of the retirees, taking into consideration the fact that section 7 of the collective agreement clearly and precisely determines that enterprises are obliged to apply by preference any benefit more favourable than that provided for by law, solely through direct application, and without accumulation of legal benefits and benefits contained in agreements relating to the same issue. It should be pointed out that this application excludes the obligation to denounce the agreement,

giving way to favourability in favour of those persons covered by the agreement. According to the Government, the abovementioned provision provides, in its final part, that in the event of a possible and future reduction, that is to say the disappearance of the most favourable legal provision, recognition of the agreement remains final, and thus the benefit in favour of the retirees is maintained regardless of the situation.

394. The Government is of the opinion that there was no violation whatsoever of the terms of the ILO Collective Bargaining Convention, 1981 (No. 154), in light of which Pereira Public Enterprises had to take into consideration section 7 of the collective agreement (dealing with favourability) when directly applying the law.

C. The Committee's conclusions

395. *The Committee notes that, in the present case, the CUT and the CPC allege that the successor companies to Pereira Public Enterprises (Pereira Waste Management SA, Pereira Telecommunications SA, Pereira Electricity SA and Pereira Water and Sanitation SA) abruptly and unilaterally suspended payment of a pension benefit which had been established by a collective agreement signed in 1963 and endorsed in subsequent collective agreements concluded in 1970, 1978, 1986, 1989, 1990, 1996 and 1997. This payment was suspended from December 1998 in the case of Pereira Telecommunications SA and Pereira Electricity SA, from June 1999 in the case of Pereira Waste Management SA and from June 2001 in the case of Pereira Water and Sanitation SA.*

396. *The Committee notes in the first place that the Government raises objections as to the competence of the Committee to examine this case because it concerns questions relative to the protection of wages. In this respect, the Committee must clarify that the question which is the object of examination in this case is not the protection of wages but the failure by various enterprises to apply a collective agreement which they had concluded with regard to certain clauses concerning pension benefits.*

397. *The Committee notes that legal proceedings were initiated to secure payment of the pension benefit but that the judicial authority rejected the case on the grounds that, subsequent to the establishment of the abovementioned benefit, Act No. 4 of 1976 was introduced, establishing an additional month's payment, which was endorsed by section 50 of Act No. 100 of 1993. According to the judicial authority, under the provisions of section 16, paragraph 2, of the Labour Code, when a new law establishes a benefit which has already been granted under an agreement or arbitration award, the more favourable benefit will be paid to the worker.*

398. *The Committee notes that, according to the Government, section 50 of Act No. 100 of 1993 established an additional month's payment of the pension, in light of which, and in line with the application of section 16 of the Labour Code and section 7 of the collective agreement in force establishing the principle of favourability, the pension benefit in place up to that point was suspended, being replaced by the additional month's payment of the pension (the latter being more favourable). The Committee notes that, according to the Government, Pereira Public Enterprises were of the opinion that the new legislation was more favourable and consequently suspended payment of the pension payment without denouncing the collective agreement in force or removing the establishing clause. The Committee notes that, according to the Government, the public enterprises do not wish to see the disappearance of this provision of the agreement owing to a possible future change in legislation which would eliminate the payment of the additional month, in order to maintain protection for the workers who would then go back to receiving the pension payment again.*

399. *The Committee observes further that, as the complainant organizations point out, the provisions relating to the pension benefit covered by the agreement continued to be included in subsequent collective agreements concluded after the adoption of the abovementioned legislation, and that the pension payment was suspended only recently, between five and eight years after the adoption of Act No. 100 of 1993. The Committee is of the opinion that if the new legislation establishing the payment of an additional month replaced the pension payment established under the collective agreement, then this pension bonus should have been removed from the clauses of the collective agreements negotiated following the issuance of the new legislation.*

400. *In this regard, the Committee recalls that collective agreements should be binding on all parties. The Committee further recalls, as it has done in the past in another case relating to Colombia, that a legal provision allowing the employer to modify unilaterally the content of signed collective agreements, or requiring that they be renegotiated, is contrary to the principles of collective bargaining [see 344th Report, Case No. 2434, para. 791]. In keeping with these principles, the Committee requests the Government to take the necessary measures to ensure that the workers in the Pereira Waste Management SA, Pereira Telecommunications SA, Pereira Electricity and Pereira Water and Sanitation SA, successor companies to Pereira Public Enterprises, receive the pension benefit established in the collective agreements concluded following the approval of the new legislation, for the period during which the said agreements have been in force while ensuring that the same benefit is not paid twice. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendation

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

> ***The Committee requests the Government to take the necessary measures to ensure that the workers in the Pereira Waste Management SA, Pereira Telecommunications SA, Pereira Electricity and Pereira Water and Sanitation SA, successor companies to Pereira Public Enterprises, receive the pension benefit established in the collective agreements concluded following the approval of the new legislation, for the period during which the said agreements have been in force while ensuring that the same benefit is not paid twice. The Committee requests the Government to keep it informed in this respect.***

CASE NO. 2490

INTERIM REPORT

Complaint against the Government of Costa Rica
presented by
— the Rerum Novarum Confederation of Workers (CTRN)
— the Trade Union Movement of Costa Rican Workers (CMTC)
— the Costa Rican Confederation of Democratic Workers Rerum Novarum (CCTD-RN)
— the General Workers' Confederation (CGT) and
— the Juanito Mora Porras Social Confederation (CS-JMP)
supported by
the International Trade Union Confederation (ITUC)

Allegations: Violations of the right to bargain collectively in the public sector and other anti-union practices

402. The complaint is set out in a joint communication by the abovementioned trade unions dated 23 May 2006. These organizations sent further information in a communication dated 12 December 2006 and made new allegations in a communication dated 9 February 2007. The International Trade Union Confederation (ITUC) associated itself with this complaint in a communication dated 22 February 2007.

403. The Juanito Mora Porras Social Confederation (CS-JMP) signed the complaint dated 23 May 2006 and submitted new allegations in a communication dated 13 July 2006. The Government sent its comments in this regard in communications dated 16 August and 21 December 2006, challenging the receivability of communications from this movement, contending that it was not a registered trade union and was unrepresentative, among other matters. The Office forwarded these comments to the CS-JMP for its observations. Given that they have yet to be received, the Committee does not include the allegations made by the CS-JMP in this report and will only consider them once it is able to take a decision on the receivability of the complaint.

404. The Government sent its comments in communications dated 16 August and 21 December 2006 and 14 May, 9 August and 5 October 2007.

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

A. The complainants' allegations

406. In their communications dated 23 May and 12 December 2006, the Rerum Novarum Confederation of Workers (CTRN), the Trade Union Movement of Costa Rican Workers (CMTC), the Costa Rican Confederation of Democratic Workers Rerum Novarum (CCTD-RN) and the General Workers' Confederation (CGT) allege that in spite of the conclusions of the Committee on Freedom of Association, the comments by the Committee of Experts and the reports of various direct contacts and technical assistance missions, the Constitutional Chamber of the Supreme Court, on the basis of cases brought by a political party or the Ombudsperson, has continued to rule that various clauses in collective

agreements containing financial and social benefits for employees of public institutions and enterprises are unconstitutional. The Constitutional Chamber has held that the clauses run counter to the principle of equality, thus ignoring the right to bargain collectively regarding better working conditions than those provided for in law or employment contracts, the significant decline in purchasing power over the last 16 years and the rights of union stewards, such as their right to collectively negotiate trade union leave, whether paid or unpaid. The complainant organizations state that in 2003, various actions of unconstitutionality were filed with the Constitutional Chamber of the Supreme Court against clauses in the agreements signed between the National Power and Light Company, the National Insurance Institute, the People's Savings and Community Development Bank and the National Production Council and their respective unions.

407. It was alleged that all the abovementioned collective agreements were unconstitutional because, according to the critics of freedom of association and collective bargaining, the rights attained by workers in these collective instruments were disproportionate, unreasonable and ran counter to the principle of equality.

408. The clauses challenged before the Constitutional Chamber in the various collective instruments are:

- ***Collective Agreement between the Industrial Union of Electrical and Telecommunications Workers (SITET) and the National Power and Light Company***

Chapter II (Entry conditions)

Article 10: Applicants must complete the job application form, duly noting if they have had previous employment, all the places in which they have worked and their duties therein, and, in addition to the skills required for the post, must possess the academic qualifications stipulated in the Job Description Manual. **The children of employees who pass away, from whom they receive a pension, shall have preference over other candidates on equal terms, except, where age is concerned if they are the head of the household and are at least 16 years of age, thereby complying with the provisions of article 91 of the Labour Code, as far as eight-hour working days are concerned. Furthermore, relatives of workers employed by the Company for a minimum of ten years shall have the same right, provided that no other relative up to the third degree of consanguinity or affinity is employed by the Company, even in a separate workplace.**

In normal situations, the minimum age for joining the Company shall be 18 years, with the exception of graduates of the National Training Institute and vocational colleges, who may join after graduating from their courses with their respective diplomas, provided that they are aged 16 years.

In future, persons in other full-time employment with ordinary working hours and retired persons shall not be able to take a post with normal working hours within the Company.

The Company shall not accept foreigners unless there is a shortage of Costa Rican nationals.

Students and graduates of the National Training Institute and vocational or technical colleges shall also be subject to the appropriate legal provisions.

The text highlighted in bold was struck out from this article by the Constitutional Chamber.

Chapter XVI (Special benefits)

Article 108: If a worker should die, his or her spouse shall continue to enjoy the benefit of paying 50 per cent of their home's electrical tariff, subject to renewal of this benefit every two years.

This article was struck out in its entirety in the Constitutional Chamber's ruling.

Chapter XVIII (Complementary retirement)

Article 123: The Company agrees to provide a guarantee, in the event that the Union obtains a loan in order to finance borrowing to provide housing for Company staff.

The Company and the Union agree that a worker's wages shall be reduced by the total necessary to pay off the worker's debt from their loan. They also agree that the Company shall use these deductions to directly provide the lending institution with the amount deducted as payment of the debt.

This article was struck out in its entirety in the Constitutional Chamber's ruling.

■ ***Collective Agreement between the National Insurance Institute Staff Union (UPINS) and the National Insurance Institute (INS)***

Article 17: Workers shall be entitled to partial compensation for their holiday periods pursuant to the following rules:

(a) For each annual holiday period, workers shall enjoy no less than 15 uncompensated working days and may request compensation of the remainder in part or in whole.

(b) Holiday compensation shall be calculated using the following formula: (weekly wages + average supplemental payments + total of deferred life insurance policy / 5 x number of days to be compensated).

Holiday compensation shall be paid with the weekly wages being drawn by the worker. The adjustment for supplemental payments indicated in part (b) of this article shall be made in December of each year, taking the calculation period to be from 1 December of the previous year to 30 November of the following year.

This article was struck out in its entirety, in spite of the fact that the Labour Code permits compensation, although the text is drafted differently.

Chapter XVI (Legal benefits)

Article 161 (currently 160):

(a) Severance pay following dismissal without just cause

Both the Institute and the worker may terminate an employment contract without just cause but must always give notification of this decision in writing pursuant to the following rules:

(1) After continuous employment lasting between three and six months: with a minimum of one week's notice.

(2) After continuous employment lasting between six months and one year: with a minimum of 15 days' notice.

(3) After one year's continuous employment: with a minimum of one month's notice.

Written notification may be waived provided that the other party affected has received the monetary payment corresponding to the period of time set forth in the abovementioned rules.

In those cases, the worker shall be entitled to severance pay in accordance with the following rules:

(i) After continuous employment lasting between three and six months: an amount equivalent to ten days' wages.

(ii) After continuous employment lasting between six months and one year: an amount equivalent to 20 days' wages.

(iii) From the date the worker joined to the anniversary of this date in 1983: one month's wages for each year or part thereof greater than six months' employment, with an upper limit of 12 payments.

(iv) From 1984, each worker shall be entitled to the compensation accrued up until 1983, in addition to one month's additional wages for each year or part thereof no less than six months, beginning from the anniversary in 1983.

The text in bold was annulled by the Chamber.

(b) Severance pay following resignation

Resignations must be tendered to the Institute in writing, according to the following rules:

(1) After continuous employment lasting between three and six months: with a minimum of one week's notice.

(2) After continuous employment lasting between six months and one year: with a minimum of 15 days' notice.

(3) After one year's continuous employment: with a minimum of one month's notice.

Written notification may be waived provided that the other party affected has received the monetary payment corresponding to the period of time set forth in the abovementioned rules.

According to their length of service, workers who resign shall be entitled to severance pay, but in the following proportion:

(i) After continuous employment lasting between three and six months: an amount equivalent to ten days' wages.

(ii) After continuous employment lasting between six months and one year: an amount equivalent to 20 days' wages.

(iii) After employment lasting between one and five years: 50 per cent of their monthly wages for each year of service or part thereof greater than six months.

(iv) After employment lasting between five and ten years: 75 per cent of their monthly wages for each year of service or part thereof greater than six months.

(v) After employment of ten or more years: one month's wages for each year or part thereof greater than six months, according to the terms of article 160(a)(iv).

The text in bold was annulled by the Chamber.

(c) Severance pay following dismissal with just cause

According to their length of service, workers dismissed by the Institute with just cause shall be entitled to severance pay, but in the following proportion:

(i) After employment lasting between one year and three years, six months: 25 per cent of their monthly wages for each year of service or part thereof greater than six months.

(ii) After employment lasting between three years, six months and six years, six months: 50 per cent of their monthly wages for each year of service or part thereof greater than six months.

(iii) After employment lasting between six years, six months and 12 years: 75 per cent of their monthly wages for each year of service or part thereof greater than six months.

(iv) After employment of 12 years or more: one month's wages for each year of service or part thereof greater than six months, according to the terms of article 160(a)(iv).

Workers dismissed by the Institute with just cause shall receive the amount due to them in monthly payments subsequent to the date on which they leave the Institute.

Such monthly payments shall be the result of dividing the total benefits by the number of years served, up to a maximum of 12 payments.

The text in bold was annulled by the Chamber.

(d) Severance pay: Length of service provisions

(i) For the purposes of the abovementioned paragraphs (a), (b) and (c), only years in the service of the Institute shall be taken into account for those workers who joined subsequent to 31 December 1983.

In the event that workers rejoin the Institute, only the years served since their return shall be taken into account.

(ii) For those workers who joined or rejoined subsequent to 31 December 1983, the years recognized under article 55(i) of this agreement shall not be considered for the purposes of this article.

(e) The rules set forth in article 161 of this agreement shall be used when determining the monthly wages to be used as the basis for paying the compensation provided for herein.

Article 27: Paid leave is granted in the following cases:

(a) Workers shall be granted eight working days' leave on the occasion of their marriage. In this case, workers must notify their line manager within 15 calendar days of the date of the marriage.

(b) In the event of the death of a worker's spouse, partner, parent (whether biological, adoptive or foster), child or sibling, workers shall be granted five working days' leave if the death occurs within the country and ten working days' leave if it occurs abroad and the worker must leave the country.

(c) In the event of a serious illness affecting a worker's spouse, partner, biological or adoptive parents or children, workers are eligible for up to 30 days' leave. In such circumstances, medical certificates must be provided and shall be assessed by a doctor designated for such purposes by the Human Resources Department. Leave shall be granted when workers are required to attend to the ill family member as a necessary part of their treatment and all other possibilities have been exhausted.

(d) Expectant mothers are eligible for one month's leave prior to the birth and three month's leave subsequent to this.

(e) Adoptive mothers are granted the benefits established in paragraph (d), with the exception of the one month prior to birth, provided that the adopted child is aged under 2 years.

(f) When an invitation is issued by international organizations for a worker to attend or participate in seminars, conferences or similar activities, a maximum of 30 days' leave shall be granted, provided that the subject is considered to be of interest to the Institute, as defined by the Human Resources Department. Such leave shall be approved by the management.

(g) At the end of the period indicated in paragraph (e), the Institute shall grant each working mother one additional day per month to take her child for a medical check-up during the child's first year of life. The respective line manager must be given at least five days' notice. The foregoing is subject to verification and non-compliance could lead to suspension of this benefit.

(h) Mothers shall be granted leave of one hour per day for nine months while breastfeeding their children. This period may be extended at the Institute's discretion, but can only be granted once a medical certificate issued by a paediatrician is submitted to the Human Resources Department.

(i) **On the birth of their child, the father shall be granted two working days' leave. These days must be included in the period between the beginning and the end of the spouse's or partner's confinement.**

(j) (Former paragraph (l)). When workers are detained for legal reasons, the Institute shall grant them unpaid leave for the entire period of their detention until a definitive ruling is handed down, except in cases relating to maintenance or those classed as offences under the Psychotropic Substances Act. Leave shall end once the ruling becomes definitive. **If workers are found innocent, the Institute shall pay them the missed wage payments.**

The text in bold was annulled by the Chamber.

■ ***Collective Agreement between the People's Savings and Community Development Bank Workers' Union (SIBANPO) and the People's Savings and Community Development Bank***

Hours of work, breaks, leave and disabilities

Article 26 (Holiday bonus): (A) Workers shall receive a cash holiday bonus from the Bank, calculated on the basis of the most recent nominal wages at the time when the holidays are taken, in accordance with the following scale:

I. After employment lasting between one and five years: the equivalent of four days' wages.

II. After employment lasting between six and nine years: the equivalent of six days' wages.

III. After employment lasting between ten and 15 years: the equivalent of eight days' wages.

IV. After employment lasting 16 years or more: ten days' wages.

(B) Workers who joined subsequent to the date on which the Second Reform to the Third Collective Labour Agreement (26 June 1998) was signed shall receive a holiday bonus from the Bank in accordance with the following scale:

I. After employment lasting between one and five years: the equivalent of four days' wages.

II. After employment lasting six years or more: the equivalent of six days' wages.

(C) Workers who joined subsequent to 27 June 2001 shall receive a holiday bonus from the Bank in accordance with the following scale:

I. After employment lasting between one and five years: the equivalent of four days' wages.

II. After employment lasting six years or more: the equivalent of five days' wages.

Paragraphs (a), (b) and (c) were annulled by the Constitutional Chamber.

Salaries, increases and other related measures

Article 44 (Wage adjustments and increases): The Bank and SIBANPO undertake to conduct a joint review of salaries every six months and to establish the corresponding adjustments or increases so that the amounts negotiated are paid in January and July of each year.

When establishing the wage adjustments of staff appointed prior to 27 June 2001, the Bank and SIBANPO shall take into consideration the official studies on increases in the cost of living.

When establishing the wage adjustments of staff appointed subsequent to 27 June 2001, the benchmark used shall be the results of surveys of market salaries for the national financial sector conducted by companies specializing in this type of study. When the adjustment from applying the survey data is less than the consumer price index variation for the same period, SIBANPO and the Board shall negotiate the corresponding adjustment.

This was annulled in its entirety by the Constitutional Chamber.

Article 45 (Increment for merit): The Bank shall increase workers' salaries each year on merit, in accordance with the pay scale currently in effect, provided that the worker obtains a rating equal to or greater than 70 per cent.

Should workers disagree with the rating, they can appeal to the Rating Appeals Tribunal under article 53 of this collective agreement.

This increment shall take effect once the worker has been in post for a further year.

This benefit shall be calculated using the Bank's own methodology that it has been applying for such purposes.

The Bank shall apply the pay scale currently in effect for the purposes of paying this bonus.

Staff joining from 27 June 2001 shall be entitled to a bonus of 4.5 per cent of their nominal monthly wages when they obtain a rating equal to or greater than 70 per cent. This bonus shall not form part of their wages for the purposes of periodic adjustments and shall be paid once per year.

This clause was annulled in its entirety by the Constitutional Chamber.

Article 79 (Five-year period): I. The Bank shall provide workers with an additional financial benefit to be made every five years of employment, in accordance with the following scale:

(a) First five-year period: 25 per cent of the nominal monthly wages.

(b) Second five-year period: 50 per cent of the nominal monthly wages.

(c) Third five-year period and beyond: 100 per cent of the nominal monthly wages at each five year period.

II. Workers joining from 27 June 2001 shall receive a benefit from the Bank every five years, according to the following scale:

(a) First five-year period: 25 per cent of the nominal monthly wages.

(b) From the second five-year period: 40 per cent of the nominal monthly wages.

This clause was annulled in its entirety by the Constitutional Chamber.

■ ***Collective Agreement between the National Production Council Workers' Union (SINCONAPRO) and the National Production Council***

Article 36: The Council, on the basis of a worker's length of service, shall automatically pay a minimum of 3 per cent per year of the base salary as the worker completes each year of service.

Article 47: The Council agrees to pay workers partial holiday compensation, in accordance with the following terms:

– Workers entitled to 15 working days shall enjoy 12 working days and may request compensation for three working days.

– Workers entitled to 20 working days shall enjoy 12 working days and may request compensation for eight working days.

– Workers entitled to 30 working days shall enjoy 12 working days and may request compensation for 18 working days.

For the purposes of paying compensation days, the monthly wage shall be divided by 27. Compensation days shall be paid in a single payment. It is understood that holiday compensation shall be made based on the wages due to the worker at the time of claiming this right, respecting the system established for those who have other sources of income, including holiday compensation.

In its ruling, the Constitutional Chamber struck out the entirety of article 47 and in article 36, deleted the words "a minimum".

409. In their communication dated 9 February 2007, the complainant organizations allege that on 15 January 2007, Mario Núñez Arias, a Congressman belonging to the Libertarian Party parliamentary faction, the same congressional faction that had requested that the Constitutional Chamber annul the various clauses in the collective agreements, filed a complaint against the trade union leaders with the Office of the Attorney-General (judicial body responsible for investigating complaints submitted to it and bringing charges before the criminal courts) for submitting a complaint to the ILO about the Costa Rican Government. This fresh attack on freedom of association attempts to "bring into line" trade union leaders by asking the Public Prosecutor's Office to criminalize and punish the submission of complaints to the ILO. The practical consequences of this would be imprisonment or some other repressive measure intended to silence union stewards and thereby leave workers in a state of utter defencelessness.

410. The said document calls for the dismissal of the union leaders, who work for government institutions, where unionization is higher.

411. This act by Congressman Mario Núñez Arias clearly seeks to silence union leaders and to deprive them of their freedom of movement, as is the custom with tyrannies.

412. In the document supporting the complaint to the Public Prosecutor's Office against the union leaders, the Congressman in question rashly states that labour and social rights are upheld in Costa Rica. This contention is a stark contrast to the numerous wake-up calls that the country has received from the ILO and its supervisory bodies in relation to Conventions Nos 87 and 98.

413. With regard to the merits of the complaint made against the union leaders to the Public Prosecutor's Office, the complainant organizations indicate that the complaint demonstrates a spirit of persecution by citing articles 27 and 30 of the Constitution, in addition to 32 et seq. of the Constitutional Jurisdiction Act, given the implications of these articles for the Attorney-General. It represents an attempt not only to gag union leaders, but also to deny them their right to report abuses committed against the union movement and its fundamental rights, thereby harming both trade unions and, in particular, members and workers throughout the country. The Congressman's action is a "complaint" of a criminal nature, which, when assessed correctly, entails depriving the "defendants" of their liberty for standing up for bargaining rights. Moreover, it is an action that leaves much to be desired, since the Congressman in question enjoys immunity under the Constitution, preventing the threatened union leaders from taking legal action unless the Legislative Assembly strips him of this privilege, which is virtually impossible.

414. The reference to articles 27 and 30 of the Constitution, in addition to 32 et seq. of the Constitutional Jurisdiction Act, has a very specific purpose. Article 27 reads: "The right to petition any public official or State entity, either individually or collectively and the right to obtain prompt resolution are guaranteed." Invoking this right to petition is a means of "reminding", warning or forcing the Attorney-General to act in accordance with the petition and to obtain a prompt resolution, i.e. that criminal charges be brought against the union leaders, given that the role of the Office of the Attorney-General is to begin criminal proceedings in matters brought to its attention, whether as a result of a complaint by an interested party, or by learning itself or through the Public Prosecutor's Office that an offence has been committed.

415. Article 30 reads: "Free access to administrative departments for purposes of information on matters of public interest is guaranteed. State secrets are excluded from this provision." Citing this right to request information can be understood in the sense that the complainant is preparing for if the Attorney-General should fail to act, when he will then file an application for *amparo* (protection of constitutional rights), stemming from the references made to the articles in his complaints. This means that the crux of the matter is not simply the submission of a complaint, but the fact that an official of the Legislative Assembly (the legislative branch) is giving an order to the Office of the Attorney-General (a body belonging to the judiciary), violating the separation of powers, in order to achieve his aim of having the Attorney-General begin the respective legal proceedings, or if not, threatening to file an application for *amparo* against him.

416. Article 32 of the Constitutional Jurisdiction Act establishes that:

> When the application for *amparo* refers to the rights to petition and to obtain prompt resolution set forth in article 27 of the Constitution, and no timeframe is indicated in which to respond, it shall be understood that the violation takes place ten working days from the date on which the application was made at the administrative office, without prejudice to reviewing in the decision on the appeal the reasons adduced as to why this timeframe was insufficient, in the light of the circumstances and nature of the matter.

417. According to the complainants, citing this set of articles (27 and 30 of the Constitution and 32 et seq. of the Constitutional Jurisdiction Act) represents a clear warning to and threat against the Attorney-General, in the sense that Mario Núñez Arias, as a Congressman, has the right to be heard and to demand a response to his petition, which must take place within the following ten working days. This means that he is expecting an immediate response from the Attorney-General and that he expects him to bring criminal charges against the union leaders for submitting a complaint to the ILO in December 2006.

418. The unions express their concern at this new attack involving a Congressman, whose political party has been and is one of the most aggressive in stripping out the labour and social rights contained in collective agreements. They argue that the Office of the Attorney-General is a further means of putting the final nails in the coffin of freedom of association by imprisoning the principal union leaders and depriving them of the right to work.

B. The Government's reply

419. In its communications dated 16 August and 21 December 2006 and 14 May, 9 August and 5 October 2007, the Government states that the use of actions challenging the constitutionality of collective agreements in the public sector has been examined on various occasions by the Committee of Experts, the Committee on Freedom of Association (Cases Nos 2104, 2300 and 2385) and ILO technical assistance missions (including the high-level mission proposed by the Committee on the Application of Standards in 2006), for which reason the Government refers to its earlier responses, along with the corresponding arguments, and also deems it desirable that Case No. 2490 be merged with Case No. 2104 (which the Committee on Freedom of Association is continuing to monitor).

420. The Government indicates that the complainant organizations have no knowledge of the rule of law and the prevailing legislation, without further justification. Legal actions of unconstitutionality are clearly valid steps taken by some public authorities and the courts. Even when the complainant organizations do not share an opinion, they must respect it, given that they are subject to the Constitution and the law. Under the Constitution, the Government is popular, representative, periodical and responsible. It is exercised by three distinct and independent branches: legislative, executive and judicial. None of these branches may delegate the exercise of their own functions. In this context, the Constitution requires public officials to be mere depositaries of authority and cannot usurp powers which the law has not vested in them. They must take an oath to observe and comply with this Constitution and the laws.

421. The Office of the Ombudsperson is empowered to challenge the constitutionality of clauses in public sector collective agreements, pursuant to decision No. 2000-7730 handed down by the Constitutional Chamber at 2.47 p.m. on 30 August 2000.

422. While the Ministry of Labour and Social Security does not endorse the actions of the Office of the Ombudsperson, nor that of some political parties to challenge the alleged unconstitutionality of some clauses in collective labour agreements, the fact is that they are living in a State governed by the rule of law and what they are doing is exercising a right.

423. The Government complies with the law. To date, only the operative paragraphs of the rulings have been issued and the complainants are acting with reference to these. The outcome of the legal proceedings before the Constitutional Chamber concerning the rules of the collective agreements affecting SITET, the National Power and Light Company, the National Insurance Institute, the People's Savings and Community Development Bank and the National Production Council, will be contingent solely upon the definitive ruling of the

country's highest legal body, once the complete text of the corresponding decisions has been drafted and notification issued, all of which are expected to take place in the near future.

424. The full texts of these rulings are of great importance, given that the operative paragraphs issued suggest that voting in each of the said actions was divided. Four of the seven judges comprising the Constitutional Chamber upheld or partially upheld the abovementioned actions, whereas the remaining three flatly dismissed them.

425. Therefore, once the text of the rulings in question has been fully drafted, the Government will be in a position to further analyse the possible annulment of some of the clauses in the public sector collective agreements, thereby avoiding falling into speculation and subjective interpretations, as has occurred with the complainant organizations during the course of the actions in question.

426. The Government wishes to reiterate clearly that the institution of collective bargaining is not in danger in Costa Rica. At the moment, what is being discussed is whether particular clauses which are considered an abuse by the Office of the Ombudsperson and an opposition political party should be declared void as a result of actions of unconstitutionality lodged. What is being discussed now is whether the abuse of a right is permitted under the Constitution. This is the fundamental discussion.

427. Labour legislation prescribes minimum rights and, in accordance with ILO case law, clauses in collective agreements can only be annulled on the basis of defects of form or non-compliance with legal minimums, including constitutional provisions. This position has been indicated to the Constitutional Chamber, duly documented, by means of third party instruments in the course of legal proceedings and various studies.

428. The foregoing bears witness to the Government's will to ensure collective bargaining in the public sector as an institution in accordance with the principles inspiring the ILO.

429. Articles 10 and 14 of the Constitutional Jurisdiction Act No. 7135 of 11 October 1989 state:

> It shall be the responsibility of a specialized chamber of the Supreme Court to rule, by absolute majority of its members, on whether rules of any nature and acts subject to public law are unconstitutional … This Constitutional Chamber and its jurisdiction are subject only to the Constitution and the law. Where not expressly stated, the principles of constitutional law shall be applied, in addition to those of public and general procedural law, or, if necessary, those of international or community law, and in turn, the Public Administration Act, the Administrative Contentious Procedures Act and the Codes of Procedure.

430. Having clarified the foregoing and in the name of exercising the right to defence, the Government refers in particular to each of the cases reported by the complainant organization regarding alleged violations of union rights to the detriment of some clauses in public sector collective agreements.

431. So that the Committee on Freedom of Association has further information on which to make its ruling, the Government will include defence reports submitted for the purposes of this communication by the heads of each of the institutions referred to by the complainant organizations and where the Constitutional Chamber found that some clauses in collective agreements in public sector collective agreements were unconstitutional. In such communications, the heads of the institutions explain the legal and other grounds (including the ILO Conventions and the position of its supervisory bodies) that had led them to agree the clauses annulled by the Constitutional Chamber with the trade unions and stress that the rulings were the unions' responsibility. Nevertheless, they state that the

annulled clauses had been submitted to the Committee on Policies for Collective Bargaining in the public sector for the very purpose of having technical support with regard to the principles of proportionality and rationality in expenditure and use of public services. The Government also includes a report submitted by the President of the Supreme Court (it indicates that the Constitution empowers the Court to rule on cases brought before it, particularly those mentioned in the case before the Committee on Freedom of Association; it also indicates the rulings in which the Court's case law can be found).

C. The Committee's conclusions

432. *The Committee observes that in this case, the complainant organizations allege that the Constitutional Chamber of the Supreme Court ruled unconstitutional various clauses in collective agreements concluded in public institutions and enterprises (the National Power and Light Company, the National Insurance Institute, the People's Savings and Community Development Bank and the National Production Council) in economic and social matters that improved the benefits established under the employment contract and legislation and, more specifically: preference for children of (deceased) workers over other candidates for employment on equal terms; financial benefits for a worker's widow; loans to assist with housing; partial compensation for holiday periods; improved severance pay in cases of dismissal with or without just cause; paid leave if a worker should be detained for legal reasons and is subsequently found innocent; holiday bonuses; wage adjustments; performance-based increases; additional financial benefits every five years and payment in lieu of part of the holiday entitlement. In addition, the complainant organizations allege that a member of a political party has filed a criminal complaint with the Office of the Attorney-General against union leaders for submitting a complaint to the ILO and also requests their dismissal.*

433. *The Committee notes the Government's statements in which it indicates that the allegations relating to legal actions of unconstitutionality brought against clauses in collective agreements in the public sector have been considered by the Committee on Freedom of Association, the Committee of Experts and various ILO missions and requests that they be considered as part of Case No. 2104. In this respect, the Committee wishes to stress that this matter has indeed been considered in previous cases. Nevertheless, the Committee considers that the allegations must be considered in the present case as they include new information and, more specifically, new declarations of unconstitutionality against four new collective agreements on the basis of four applications for constitutional review made in 2003 to the Constitutional Chamber of the Supreme Court, particularly by the Ombudsperson and members of a political party.*

434. *The Committee notes the Government's statements, according to which (1) the Government does not endorse the actions of the Office of the Ombudsperson nor of other political parties in challenging collective agreements, even if they are entitled to do so; (2) the Constitutional Chamber's decisions have not been drafted in full, only the operative paragraphs exist, but they suggest that voting was divided; (3) the Government's analysis process makes it clear that the full text of the rulings is required in order to avoid falling into speculation and subjective interpretations; (4) the Government has indicated the ILO's position and its principles to the Constitutional Chamber; and (5) the Government has demonstrated its will to ensure collective bargaining in the public sector as an institution. The Government attaches communications from the heads of enterprises and institutions affected by the annulment of particular clauses in their collective agreements. There is a particular unease emanating from these communications, especially since the agreements had been set before the Committee on Policies for Collective Bargaining in the public sector at the time in order to have technical support, although they do point out that they must abide by the Constitutional Chamber's rulings and the separation of powers principle. The Committee observes the Government's request that its statements and*

arguments made in previous cases also be included. The Committee summarizes the Government's previous statements in earlier cases as follows: (1) the Government possesses the will and commitment to resolve the problems; (2) it has requested the ILO's technical assistance in the hope that this will help to solve the problems mentioned; (3) the efforts of the Government (many of which were tripartite) regarding these problems included the presentation of several legislative proposals to the Legislative Assembly and their reactivation: a draft constitutional amendment concerning article 192, a bill on collective bargaining in the public sector, and the addition of paragraph 4 to article 112 of the General Law on Public Administration (the three initiatives are intended to strengthen collective bargaining in the public sector); bill on parliamentary approval of ILO Conventions Nos 151 and 154; the draft revision of various sections of the Labour Code, Act No. 2 of 26 August 1943 and Decree No. 832 of 4 November 1949; (4) the Government's efforts also include other types of initiatives, such as the intervention of third parties to defend collective agreements (coadyuvancia) *in legal actions of unconstitutionality brought in order to annul specific clauses.*

435. *The Committee observes that the issue of legal actions of unconstitutionality brought in order to annul clauses in collective agreements in the public sector was the subject of a high-level mission in 2006 and has been examined in recent years by the Committee of Experts. In its 2006 observation on the application of Convention No. 98, the Committee of Experts stressed that according to the conclusions and the documentation of the high-level mission, the problems relating to collective bargaining will be addressed through the mentioned draft amendments to the Constitution and the General Law on Public Administration, a bill on the negotiation of collective agreements in the public sector, and through proposals for parliamentary approval and ratification of Conventions Nos 151 and 154; the pending proposals will be examined by the Higher Labour Council (a tripartite body for dialogue) with the objective of studying them and providing them with new impetus, through consensus; and the Higher Labour Council asked the Legislative Assembly to set up a joint commission, with the technical assistance of the ILO, in order to develop the plan for the reform of the working procedures.*

436. *The Committee endorses the comments made by the Committee of Experts at its November 2006 meeting, reproduced as follows :*

> *The Committee notes on the other hand that, as concerns the possibility of judicial annulment of clauses in collective agreements in the public sector on the basis of criteria of rationality and proportionality, the mission explained the principles of the ILO to the different authorities involved in the complaints filed for unconstitutionality regarding these collective agreement clauses. The Committee notes that the relation of votes of the judges of the Constitutional Chamber annulling the clauses of the collective agreements is in development, having passed from a vote by 6 to 1, to 4 to 3, and thus, according to the Government, out of a total of 1,828 clauses, 122 had been contested (6.67 per cent) out of which only 15 were invalidated (0.82 per cent), 31 were deemed constitutional (1.69 per cent) and 76 were unresolved and still pending; according to the Government, the contested clauses precede the Decree of 21 May 2001 regulating collective bargaining in the public sector as well as the adequate consideration of the jurisprudence of the Constitutional Chamber, which will obviate new contestations in the future.*
>
> *The Committee underlines nevertheless that the trade union rights situation remains sensitive. The cases submitted to the Committee on Freedom of Association and the numerous complaints to the mission demonstrate the persistence of important problems regarding the application of the Convention in matters of anti-union discrimination and collective bargaining, which have given rise to discussions in the Conference Committee on several occasions. The Committee understands the difficulties of employers' and workers' organizations, faced with a lack of political will on the part of preceding governments whose proposals for legal reform were inadequate or lacked sufficient support, in spite of the fact that, in several cases, they were following tripartite agreements. The Committee emphasizes*

the dangers for the system of labour relations and collective bargaining of the authorities' failure to produce a set of agreements reached through tripartite consensus.

The Committee notes the Government's contacts with certain members of the Legislative Assembly who belong to the largest opposition party and who, according to the report of the high-level mission, also support the reforms requested by the ILO. The Committee also notes that … it includes a process for reactivating other legal reforms.

The Committee expresses the hope that the various legal reforms currently in progress will be adopted in the very near future, and will be in conformity with the Convention. The Committee requests the Government to keep it informed in this regard, and hopes that the political will unequivocally expressed following the high-level mission will lead to the fuller application of the rights and guarantees contained in the Convention.

437. *The Committee requests the Government to keep it informed of developments with regard to the measures and decisions taken, in addition to the status of bills on collective bargaining in the public sector (including those relating to the ratification of Conventions Nos 151 and 154) and expects that the Constitutional Chamber of the Supreme Court will take fully into account Costa Rica's commitments arising from the ratification of Convention No. 98, particularly as regards respect for the principle of collective bargaining in the public sector. The Committee reiterates that additional legal and other guarantees are required to avoid the abusive use of the recourse of unconstitutionality against collective agreements in the public sector by the Office of the Ombudsperson and the Libertarian Party [see 338th Report, Case No. 2385 (Costa Rica), para. 815] which inevitably leads to the social partners losing confidence in collective bargaining, and requests the Government to continue to keep it informed in that respect, as well as of the progress of the joint commission of the Higher Labour Council and the Legislative Assembly with the assistance of the ILO.*

438. *Lastly, the Committee regrets that the Government has not responded to the allegation regarding the criminal complaint made to the Office of the Attorney-General against union leaders for submitting a complaint to the ILO, in which their dismissal was sought. The Committee requests the Government to respond to this allegation without delay and recalls that no union leader should be subject to intimidation, retaliation or sanctions as a result of submitting complaints to the ILO.*

The Committee's recommendations

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

(a) The Committee reiterates that additional legal and other guarantees are required to avoid the abusive use of the recourse of unconstitutionality against collective agreements in the public sector by the Office of the Ombudsperson and the Libertarian Party which inevitably leads to the social partners losing confidence in collective bargaining and requests the Government to keep it informed in that respect.

(b) The Committee requests the Government to continue to keep it informed of developments with regard to the measures and decisions adopted in relation to ensuring respect for the principle of collective bargaining in the public sector, including the bills mentioned in the conclusions (bill of ratification of Conventions Nos 151 and 154), as well as of the progress of the joint commission of the Higher Labour Council and the Legislative Assembly with the assistance of the ILO.

(c) The Committee expects that the Constitutional Chamber of the Supreme Court will take fully into account Costa Rica's commitments arising from the ratification of Convention No. 98.

(d) Lastly, the Committee regrets that the Government has not responded to the allegation regarding the criminal complaint made to the Office of the Attorney-General against union leaders for submitting a complaint to the ILO, in which their dismissal was sought. The Committee requests the Government to respond to this allegation without delay and recalls that no union leader should be subject to intimidation, reprisals or sanctions as a result of submitting complaints to the ILO.

CASE NO. 2518

INTERIM REPORT

Complaint against the Government of Costa Rica presented by
— the Industrial Trade Union of Agricultural Workers, Cattle Ranchers and Other Workers of Heredia (SITAGAH)
— the Plantation Workers Trade Union (SITRAP)
— the Chiriquí Workers Trade Union (SITRACHIRI) and
— the Coordinating Organization of Banana Workers Trade Unions of Costa Rica (COSIBA CR)

Allegations: The complainant organizations allege the slowness and ineffectiveness of administrative and judicial procedures in cases involving anti-union practices, the impossibility of exercising the right to strike given that most strikes are declared illegal by the judicial authority, discrimination in favour of permanent workers' committees to the detriment of trade unions and numerous acts of anti-union discrimination in enterprises in the banana sector

440. The complaint is contained in a communication from the Industrial Trade Union of Agricultural Workers, Cattle Ranchers and Other Workers of Heredia (SITAGAH), the Plantation Workers Trade Union (SITRAP), the Chiriquí Workers Trade Union (SITRACHIRI) and the Coordinating Organization of Banana Workers Trade Unions of Costa Rica (COSIBA CR) of August 2006. These organizations sent additional information in a communication of October 2006.

441. The Government sent its observations in communications dated 21 December 2006 and 3 August 2007.

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

A. The complainants' allegations

443. In their communication of August 2006, SITAGAH, SITRAP, SITRACHIRI and the Union of Agricultural Workers of Limón (UTRAL), affiliates of the Coordinating Association of Banana Workers of the Atlantic Region and Sarapiquí, state that the complaint arises from serious failure to act and indifference on the part of the State of Costa Rica and its institutions, violation of freedom of association and unfair labour practices by private enterprises against unionized workers, their representatives and their organizations, violation of the fundamental right to access to prompt, full and effective justice, especially in regard to protection of the rights of unionized workers in the private sector against unfair anti-union practices by private enterprises which violate agricultural and banana workers' fundamental labour rights. These workers are now being denied their rights under the Universal Declaration of Human Rights, constitutional provisions on freedom of association, the Labour Code (section 363 and ff. and related sections), ILO Conventions Nos 87, 98 and 135 relating to collective bargaining and freedom of association and Decision 5000-93 of the Constitutional Chamber on the same subject. As has been publicly denounced on numerous occasions, banana and other agricultural enterprises are continuing to subject unionized workers to persecution, discrimination, harassment, lower wages, threats and dismissal. Among other serious violations in recent years, denial or lack of viable or achievable access to the fundamental right to strike occurs with the tacit complicity of the Costa Rican State, which boasts that its inhabitants live under the rule of law, but when it comes to applying the law in favour of workers, the conditions for access to the judiciary are such that they make it impossible for workers to have recourse to it; with proceedings lasting more than six years it is entirely ineffective. Costa Rican workers are not protected by judicial or administrative procedures that defend their rights in a rapid and efficient manner. For example, in the Dos Ríos banana plantation, over 200 workers were not paid their wages on time or in the required form. Despite the fact that the workers were even working without pay to help the employer, when they held a protest strike the enterprise filed a complaint against them with the labour court, which declared the strike illegal, and all the workers were dismissed without any of their statutory rights or benefits. The representative of the enterprise stated that they had not been dismissed, but had resigned.

444. In this regard, the ineffective Labour Code subjects the right to strike to a solemn and formal procedure more suited to ancient Roman and canonical law. Costa Rican labour law is not consistent with the real needs of Costa Rican workers – without wages, their families going hungry and without the money to pay for a labour lawyer. It is impossible for workers to meet the endless formal requirements for exercising their constitutional right to strike. The procedure is designed for workers to fail in the attempt. How many strikes have been declared legal in the private sector in Costa Rica during the last 100 years by the labour courts? One or two, if any. It is obvious that unionization of private sector workers is the target of repression.

445. Apart from the banana workers' unions, trade union activity in the Costa Rican private sector is non-existent. In the Central Valley or the greater metropolitan area, where thousands of enterprises are located, there are no trade unions, and the few that do exist can be counted on the fingers of one hand; this is not because the workers do not want them, but because repression by enterprises is such that any workers attempting to organize are immediately dismissed.

446. The complainants emphasize that the utter indifference of government bodies has meant that the fundamental rights of all unionized workers are illusory. In practice, the right to organize in the private sector is nothing but a dream. The facts put forward in this complaint are merely a small sample; in reality the situation is far worse. The workers have

been terrorized to the point where they are afraid of the words "trade union", and they know that anyone attempting to form a trade union will be immediately dismissed.

447. Although there is a whole body of law protecting workers' rights in regard to freedom of association and labour legislation, it is a serious matter for concern that the competent administrative authority in regard to protecting workers' rights – the General Labour Inspectorate of the Ministry of Labour – does absolutely nothing. It fails to display the slightest interest in practice in resolving this kind of problem or disputes affecting the workers of the private sector in the country, a further aggravating factor being that trade union activity in the private sector is entirely prohibited by employers, and anyone who does not abide by the employer's wishes is immediately dismissed. For these reasons, a number of appeals for protection of constitutional rights *(amparo)* have been filed by different banana workers' unions against the Labour Inspectorate of the Ministry of Labour (12 are mentioned in the complaint) on grounds of violation of the constitutional right of access to prompt and full justice (article 41 of the Constitution). According to the complainants, all of the *amparo* proceedings resulted in a ruling in favour of the workers. The complainants assert that labour legislation needs to be changed in order to protect workers' rights; an employer may dismiss any worker without just cause or on spurious grounds, and legal action can take up to six years or more.

448. The political Constitution provides for freedom of association and that workers have no obligation to join or not join a trade union. Employers make full use of this right, since they coerce workers to withdraw from trade unions and, although penalties exist for employers who coerce workers, any proceedings for this purpose must be brought before an ordinary court and take years, generally to the detriment of the workers.

449. In its communication of October 2006, the complainant organizations state that the legislature and the Government have enacted legislation specially designed to destroy the trade union movement in the private sector, with the creation of "permanent workers' committees". In this regard, section 504 of the Labour Code provides that:

> Employers and workers shall endeavour to resolve their differences through direct arrangement, with the sole participation of the parties or of any other mediator chosen by them. To that end, the workers may establish permanent councils or committees in every workplace, composed of no more than three members, who shall be responsible for submitting their complaints or requests to the employers or their representatives, either verbally or in writing. Such councils or committees shall be duly attentive in carrying out their duties and, when they do so, the employer or his representative shall not refuse to receive them at the earliest opportunity.

In other words, this section applies only to enterprises in the private sector, but not to the public sector.

450. The complainant organizations wonder why this discrimination between one sector and another. In their view, the answer is obvious: the premeditated destruction of trade unions in the private sector. In this respect, they consider that the following should be taken into consideration: (a) while a trade union has at least 12 workers, the permanent committee consists of only three; (b) in a trade union all the members of the executive must be Costa Rican citizens, while the members of the permanent committee may be foreign workers, even if they do not have any knowledge of labour legislation; (c) a trade union is required to have legal personality and its own structure and formal procedure, while permanent committees are authorized to negotiate by means of a simple note to the Ministry of Labour; (d) a trade union is represented in any negotiations with the enterprise by the members of the executive committee, previously elected at a workers' assembly. Permanent committees are invariably required by the employers' side to include a "mediator"; (e) trade unions hold their assemblies privately and subject to the independent

will of their members; permanent workers' committees always hold their meetings on the premises of the enterprise and in the presence of the management; (f) the term of office of trade union officers is prescribed by law; members of workers' permanent committees who do not agree with the policies of the enterprise are generally removed from office at any time, in the absence of any regulations on the subject; (g) in pursuit of their objectives, trade unions fight for the collective agreement, which has force of law, while permanent committees conclude an "agreement", termed "direct settlement", with the employers; (h) a collective agreement is submitted by the trade union, while the direct settlement is drafted by the enterprise and is generally mandatory; (i) there is one collective agreement, but 500 direct settlements.

451. By way of example and as a very small sample, the complainants mention the following facts that have recurred over a relatively short period, without any intervention by the State of Costa Rica to impose order.

I. Case of Chiquita

452. The Atlántica Limitada Chiquita banana company violated a regional agreement signed between Chiquita and the banana unions. It has carried out the threats it had been making against representatives and members of the executive of the SITAGAH trade union and members of the Committee on the Implementation of the Regional Agreement. Although the banana workers' trade unions signed an agreement between the IUF/COLSIBA and Chiquita on freedom of association, minimum labour standards and employment in banana operations in Latin America, the threats made by the enterprise were carried out in the form of dismissals. The transnational enterprise is failing to meet its own commitments, as may be seen in the examples given below.

I.1. Chiquita – Cobal

453. Despite the fact that a framework agreement has been signed between the banana trade unions and Chiquita, under which the employer undertakes to respect freedom of association and commitments relating to labour relations with the workers who are members of trade unions, the enterprise has never complied with this agreement, and does not recognize its commitment. For some time now, the company in question has been waging a cold war and committed physical and psychological attacks against all of the workers who are members of banana trade unions, making their lives practically unbearable. Unionized workers are not shown any respect or consideration, and are being given to understand that the enterprise is doing them a favour by giving them work and that if they are not satisfied they can leave. Most of the enterprise managers are trained or indoctrinated to combat unionization in all of the banana producing areas of Costa Rica where Chiquita has interests. The centre of its operations is now the Atlántica Limitada banana company, located in Sarapiquí, where the SITAGAH is active and where membership has been on the increase recently owing to poor working conditions in the company, eliciting a furious response from the employer, which has taken an angry and dismissive stance towards unionized workers and SITAGAH.

454. In Cobal there has been a wave of serious anti-union persecution against the workers' organization and all of its members, especially trade union leaders who work or have worked there. The enterprise dismissed workers' representative Mr Teodoro Martínez Martínez, accusing him of a dubious offence allegedly committed on 8 April 2006. Even if he had done so, the enterprise has one month to apply the penalty, but he was given his notice of dismissal on 12 May and received it on the same date, i.e. after the statutory deadline. Moreover, there were no grounds for the dismissal, which was solely motivated by his being a trade union representative. His dismissal was deviously planned in order to set an example. The truth is that the Cobal management did not like the statements being

made by trade union officer Teodoro Martínez Martínez in defence of the workers and their labour rights which were being violated daily at the enterprise. Thus they not only rid themselves of a very valuable member of SITAGAH who was an outstanding defender of his fellow workers, but left the other members without defence as he could no longer represent them. Persecution is apparently closely targeted at trade union leaders on the plantations. Relying on inaction by the Costa Rican authorities, whether the judiciary or the Ministry of Labour, as well as the labour legislation in force, enterprises have been doing what they like in the framework of processes lasting for six or seven years.

455. Mr Amado Díez Guevara, Undersecretary of SITAGAH and member of the Committee on the Implementation of the Regional Agreement between the IUF/COLSIBA and Chiquita, was dismissed on spurious grounds and denied the right to defence or due process, despite the fact that an agreement provides for a procedure in cases where a worker is penalized for any kind of disciplinary offence. Due process is only granted to management, who have all the evidence on their side, in other words they are both judge and party in an internal procedure. This worker has been persecuted for a long time and was ultimately informed of his dismissal on 30 May 2006 in a letter which does not specify the conditions of his dismissal. This trade union officer and labour leader has always displayed considerable knowledge and leadership among his fellow workers. Chiquita's aim is to eliminate all the trade union members of the Committee on the Implementation of the Regional Agreement between IUF/COLSIBA and Chiquita.

456. Mr Pedro Calero Ruiz, a trade union representative on Chiquita's Oropel plantation, was dismissed with payment of his benefits. He is claiming the statutory immunity granted to unionized workers. The enterprise issued a memorandum of 23 February 2006 in which it undertook to cancel the dismissal. However, it has not carried out this commitment to date. Mr Vicente Rodríguez Cubero, another labour leader and member of the SITAGAH executive was also dismissed, and trade union member Mr Evaristo Chavarría Campos had his wages reduced by 30 per cent as a means of exerting psychological pressure on him. There is no doubt that the workers are being subjected to anti-union persecution and unfair labour practices, which have been the subject of repeated complaints to the Ministry of Labour in recent years, without any positive results for the workers or the trade union so far.

457. Mr Juan Francisco Reyes, a member and officer of the trade union at the Cobal Gacelas plantation, was subjected to surveillance, persecution, harassment and penalties on spurious grounds and ultimately was dismissed without employer liability. The reason for the dismissal was his membership of SITAGAH.

458. Mr Ricardo Peck Montiel, trade union representative at Cobal's Cocobola plantation, trade union leader and member of the Committee for the Implementation of the Regional Agreement, has been constantly monitored and harassed in an attempt to find a reason and finally dismiss him. He has been subjected to psychological pressure, harassment and discrimination by the human resources representative of the company and other members of management. The aim of the enterprise is to bring down membership on the plantations and eliminate the trade union presence, which has been typical behaviour of this transnational enterprise throughout the history of its operation in the banana growing regions.

459. A major anti-union campaign has been organized on the Cobal – Chiquita plantations by representatives of management, who have continued to violate labour law and fundamental rights in the case of Sarapiquí. Naturally, all those responsible for violating fundamental labour standards are managers employed by the Chiquita transnational enterprise. Strange as it may seem, this company does not even comply with court orders, relying on the absolute anarchy and chaos that reign in our ineffective judicial system and in complete

disregard for the law. Neither does it respect the legal system in the case of judicial decisions or final rulings. Such was the case of judicial proceedings (file No. 00-000031-0166-LA), instituted against Cobal by Mr Reinaldo López González, a worker who was dismissed while he was a workers' representative and trade union member. Two years ago the courts handed down a final ruling which the enterprise refuses to implement, ordering the worker's reinstatement in his former post and payment of his unpaid wages. A similar case is No. 02-000616-0166-LA, brought against Cobal by the worker Mr Leopoldo Alvarez Alvarado, a member of the SITAGAH executive. Nearly a year ago the courts handed down a judgement ordering that anti-union persecution and harassment cease and that he be paid the wages that had remained unpaid as a result of a substantial reduction in his wages and extra work unilaterally imposed on him by the enterprise. However, the enterprise refuses to execute this judgement and the worker is still being persecuted and threatened with continued reduction of his wages. Similarly, in case No. 98-003283-0166-LA, involving Mr Manuel Murillo de la Rosa, candidate trade union representative of SITRACHIRI, the courts issued a final judgement ordering the enterprise to reinstate the worker and pay him his unpaid wages. Despite the fact that the judgement has been final for one year, the enterprise has still not carried it out. In case No. 95-000954-0213-LA, the judgement has been final for over one year in proceedings for refusal to deduct members' trade union dues. The San José labour court ordered the enterprise to make the payments, but it has not complied with this order. The Chiquita enterprise has fallen into a pattern of refusing outright to comply with labour law or court decisions. The transnational enterprise continues to violate legislation with the full consent of the State of Costa Rica in the form of total apathy in the face of such conflicts.

I.2. Chiquita – Chiriquí Land Company – Sixaola

460. The transnational Chiriquí Land Company – Chiquita in the Sixaola area, Talamanca, Limón, Costa Rica, has flouted the eighth collective agreement concluded with SITRACHIRI and imposed a single wage rate for all the workers, without paying overtime or extra work, disregarding lunch breaks and violating all the labour rights laid down in the collective agreement. The trade union and the workers have referred the case to the Ministry of Labour and the labour court, but have received no reply in defence of their labour rights. The only response received from the state bodies, the judiciary or the Ministry of Labour has been in the form of obstacles, evasive replies and pretexts for avoiding action. The workers do not even have the constitutional right to strike, a fundamental statutory right which is illusory as far as the workers are concerned.

461. Right to strike. The banana workers employed by the Chiriquí Land Company and the private sector know that although the right to strike is classified as a fundamental right, they cannot exercise this right. A number of complaints have been filed of violations of labour rights: (1) Labour Court of Limón – First Circuit of the Atlantic Region: ordinary labour proceedings instituted by Alberto Jiménez Santos and others against Chiriquí Land Company, file No. 02-300013-461-LA. Over 250 workers are complaining against wage reductions and proceedings have been under way for nearly five years without even a judgement of the court of first instance, out of three levels of jurisdiction; (2) Labour Court of the First Circuit of the Atlantic Region: labour proceedings brought by workers employed by the Chiriquí Land Company: SITRACHIRI versus Chiriquí Land Company, file No. 06-000165-LA (violation of the collective agreement); (3) socio-economic collective dispute filed by the workers employed by the Chiriquí Land Company (file No. 06-000265-0679-LA); (4) Court of the First Circuit of the Atlantic region of Limón: Chiriquí Land Company against its employees, petition to declare a strike illegal, file No. 06-000241-0679-LA-4. In the latter case, the unionized workers were accused of holding an illegal strike and, although the first ruling was in favour of the workers, it was overturned by a higher court and a new judgement is awaited. It is not even worth mentioning the large number of complaints filed with the Ministry of Labour which, as

usual, never does anything for the workers. It is impossible to take any strike action, since they are always declared illegal by the courts.

462. At no time did the banana workers of Chiriquí Land Company, driven by fear as they were, hold a strike as found by the labour court. They never intended to hold a strike without having exhausted the cumbersome legal procedure, and were afraid of striking, as it would be declared illegal and they would be left without a job.

463. The enterprise accused the trade union of holding an illegal strike for having held a one-day protest against violation of labour rights and of the agreement itself. All the workers who were absent on that one day went to work on the following day because they knew that if they missed two consecutive days' or three non-consecutive days' work in the same month they would immediately be dismissed. The Chiriquí Land Company considers that a strike has been held when this was not the case, in a deliberate attempt to confuse the judicial authority. It has acted recklessly from the outset, and its main objective is to reduce costs to a minimum. The judicial authority has been requested to intervene with speedy, timely and preventive decisions that protect workers' rights.

464. In this specific case there is said to be a collective agreement in force between the parties, which is being infringed by the enterprise, resulting in serious material and moral prejudice to the workers. The most logical approach would be for the labour court to order the enterprise to refrain from such conduct or restore the original state of affairs, as these are illegal actions on the part of the employer affecting more than 400 workers. The workers are severely perplexed by the fact that the workers have to wait up to five, six or more years for a labour court to determine whether they are right and whether the collective agreement applies to the employment contract. The labour court has been requested to order the Chiriquí Land Company to abide by the collective agreement it signed with the workers. In any case, enterprises also have the right to appeal any decision.

465. The complainants stated that the workers referred a socio-economic collective dispute to the Labour Court of the First Circuit of the Atlantic Region and presented a list of demands (copy attached). The complainants point out that in regard to the complaint concerning discriminatory dismissals, the Labour Court of Limón of the First Circuit of the Atlantic Region replied that an ordinary complaint should be filed. A complaint concerning anti-union persecution is also pending before the same court. On 1 September 2004, the following nine trade unionists were dismissed: (1) Santiago Pineda González, for having claimed his rights through the trade union before the Ministry of Labour; (2) Mauricio Masis Suazo, trade union representative, who was issued warnings for no reason, and denied overtime for having participated in conciliation with the Ministry of Labour; (3) Julio Bustos Cortés, for having claimed his rights through the trade union before the Ministry of Labour; (4) Juan Ramón Ortega Salinas, for having claimed his rights through the trade union before the Ministry of Labour; (5) Yeffry Valle Romero, dismissed for being a union member; (6) Reinaldo Martínez Arguello, trade union representative; (7) Bayardo López Guido, who presented a medical certificate which was not taken into account, and was dismissed without employer liability; (8) Hader Palacio Cano, a member who was dismissed (no legal action was taken); and (9) Herminio Méndez Miranda, a member who was dismissed (no legal action was taken).

466. The complainants point out that the first five names are included in the record of the Ministry of Labour issued on 7 September 2004 and the last four in the document received by the enterprise on 24 September 2004. Clearly, the enterprise not only intends literally to wipe the trade union off the face of the earth or eliminate its leadership, but also to rid itself of all its members, flouting all the principles of society, humanity and legality. According to the enterprise, it is dismissing workers because of problems on the market, which is entirely false given the fact that it is hiring new workers (to replace those who

were dismissed). Managerial staff have told the workers that they will dismiss union members every week until there are none left.

467. The complainants state that they have complained to the administrative and judicial authorities that following the nine anti-union dismissals, the following members were dismissed: (1) Lester Quiñónez Mondragón; (2) Jaime Martínez Urbina; (3) José Luís Martínez Chavarría and (4) Juan Martín Franco Muñoz. The following workers were also issued warnings for no reason: Esperanza López Cano, Isidro Flores Molina, Narciso Duarte Picado, Samuel Rizo Acuña, Francisco Oporta Díaz, Juan Manuel Espinoza Medina, Margarito Pineda Calero and others. Management is now also refusing to meet with the workers and to attend conciliation hearings convened by the Ministry, even at the request of the Ministry of Labour.

II. Case of Desarrollo Agroindustrial de Frutales SA enterprise

468. ILO Conventions are not being applied at the workplace, especially those relating to freedom of association and collective bargaining. Specifically, (1) since there is no possibility of genuine collective bargaining, the enterprise applies different remuneration rates with the aim of reducing workers' wages and (2) persecutes and discriminates against members of SITAGAH. Management has stated its intention to do everything it can to get the workers Veneranda Vaquedano Oliva and Modesta Barrera González to leave the trade union, and they have suffered various attacks. Mr Jorge Luis Rojas Naranjo was dismissed for processing fruit that was unfit for sale. There is no just cause for his dismissal, which was motivated by his trade union membership. Mr Ediberto Guido González, a member of the trade union executive, was dismissed on the pretext of unjustified absences. Although he was subsequently reinstated, both the organization and the worker were psychologically and morally affected. He was dismissed for about three months, and the company used the opportunity to frighten workers wishing to join the trade union. The worker Larry Zavala Alvarado was dismissed for approximately one year, and later reinstated following talks but, as in the previous case, the fact that he was dismissed for such a long period served to intimidate other workers who had joined or intended to join the trade union; (3) management threatens to have the police remove members of the trade union executive committee who visit workplaces, and they have been subjected to verbal attacks, specifically in the case of trade union official Abel Jarquín González; and (4) the enterprise maintains that there have been no anti-union dismissals, but some workers have been dismissed, for example trade unionist Germán Enoc Méndez, who was dismissed because he was unable to work more than 12 hours.

III. Case of Santa María del Monte SA agricultural enterprise

469. SITAGAH has filed complaints with the Ministry of Labour and Social Security, the labour inspectorate and the provincial office of Heredia concerning the following anti-union dismissals: (a) Inocente Aguilar Gamboa, dismissed on 2 June 2005 for membership in SITAGAH; he was also a workers' delegate; (b) Armando Torres Espinoza, dismissed on anti-union grounds on 21 May 2005; (c) Manuel López Muñoz, dismissed on anti-union grounds on 21 May 2005; (d) Erick Jarquín Castro, dismissed on anti-union grounds on 21 May 2005; (e) Noel Leiva Martínez, dismissed on anti-union grounds on 21 May 2005; (f) Deivis Antonio Amador Benítez, dismissed on anti-union grounds on 21 May 2005; (g) Josefa López Jaimes, dismissed on anti-union grounds on 21 May 2005; (h) César Antonio Amador Benítez, dismissed on anti-union grounds on 14 March 2005; (i) Yanci Barahona Aguirre, dismissed on anti-union grounds on 21 May 2005; (j) Bismark Rodríguez Martínez, dismissed on anti-union grounds on 21 May 2005; (k) Martín López

Ortega, dismissed on anti-union grounds on 14 May 2005; (l) Mireya Gutiérrez Taisagua, dismissed on anti-union grounds on 2 June 2005; (m) Xiomara Aracelly Taisague Dormos, dismissed on anti-union grounds on 5 May 2005; (n) Alcides Reyes Palacios, dismissed on anti-union grounds on 4 April 2005; (o) Fabio Amador Martínez, dismissed on anti-union grounds on 4 April 2005; and (p) Felipa Gutiérrez Taisagua, dismissed on anti-union grounds on 4 April 2005.

470. The complainants point out that once the workers decided to join the trade union, they were immediately subjected by managerial staff and foremen to persecution, harassment, threats and intimidation until they were finally dismissed. They add that during the night of 14 March 2005 migration police officers arrived at the plantation owned by the Santa María del Monte SA enterprise, known as Pénjamo, in Zapote, Puerto Viejo, Sarapaquí. The police immediately detained a group of workers who had been employed by this employer for a number of years. They were then transferred under arrest to the police jail of Puerto Viejo. Local rumour has it that this procedure was ordered by the employer himself, since the workers include members of SITAGAH. The following workers were detained: Florián Reyes González, Martín López Ortega, Noel Leiva Martínez, Isaías Escobar Velásquez, Manuel López Muñoz, Jairo Oviedo Macareno, Ramón Martínez Martínez, Alcides Reyes Palacios, Juan Arauz Angulo, César Amador Benítez and Jimi Baltodano Cortes.

IV. Talamanca and Zavala banana companies

471. UTRAL reported to the administrative authority that 200 workers employed by the Talamanca and Zavala banana companies had their employment contracts suspended without giving any notice to enable them to cope with this difficult economic situation. The complainant organizations state that the UTRAL filed a formal collective complaint against the Talamanca SA banana company on the following grounds: a severe deterioration in the economic situation and working conditions, which are very poor and marked by extreme poverty, the erosion and violation of all of the labour rights laid down in Costa Rican labour legislation, particularly in the light of the refusal by the enterprise to negotiate on any issue relating to wages and work; and that the complaint was filed against the enterprise jointly and subsidiarily in view of the fact that the workers are used interchangeably by two companies. The complainants add that the defendants do not comply with basic obligations like: (1) failure to pay even the minimum wage; (2) failure to pay the end-of-year bonus on time; (3) failure to pay for leave on time; (4) failure to pay social security contributions on time, despite the fact that they were regularly deducted; (5) failure to pay contributions to the National Insurance Institute; (6) failure to comply with even basic occupational health standards; (7) lack of minimum preventive measures in regard to workers' health; and (8) arrears in the payment of wages. In other words, the case encompasses all the existing violations of labour legislation. The enterprises were called into the Ministry of Labour and Social Security on a number of occasions, but their representatives never attended these meetings, disregarding them entirely. The complainants state that they had to bring their case before the judicial authority since, for more than four months, the enterprise had not responded to their request to negotiate a collective agreement.

V. Plantations Cariari and Teresa, owned by Banacol (Chiquita supplier)

472. The complainants state that on 20 March 2006, an initial list of 14 workers who had freely decided to join the Plantation Workers Trade Union (SITRAP) was submitted to the offices of the enterprise, located in Cariari de Pococí, with copies sent to the Ministry of Labour of Guapiles Pococí. On the same day, the organization secretary of SITRAP had a

conversation with the production manager of that enterprise and told him that he wanted to handle the situation properly, requesting him to ensure that there were no reprisals against members. However, on 21 March 2006, the manager launched a campaign to get the workers to withdraw from membership of the trade union, calling a worker into the office and asking him to leave the trade union. He told him to look at what had happened in the South Pacific in 1984, when the banana plantations had closed down because of the trade unions, that if he left the plantation he would not be able to find a job on any other plantation as he would be blacklisted, that he would be paying trade union dues for nothing and that the money would be better spent on something for his children, etc. The enterprise allows some members of the permanent committee on the plantation to hold meetings with groups of workers and talk to them along the same lines as the manager; this task is also carried out by foremen and solidarist promoters from the Escuela Social Juan XXIII.

473. On 27 March 2006, the second list of six members was submitted to the office of the enterprise in Cariari. On the same day, the trade union representative had another conversation with the production manager on what was happening to the workers who had joined the trade union. The meeting was rescheduled for 10 April 2006 in the same offices and a nine-point agenda submitted by SITRAP was discussed. However, no agreement was reached on any of the points and a meeting was scheduled for 26 April 2006. Persecution of trade union members has continued on the plantation. Since joining the trade union, Mr Isidro Sánchez Obando was transferred from the job he had been doing for more than three years and his wages reduced, in addition to psychological pressure. Mr Angel Sánchez Coronado was also transferred from his position of the last three years after joining the trade union. In addition, he was assigned harder tasks, at a lower wage and with more hours of work. After joining the trade union, Mr Hermes Cubillo Gomes was transferred from the job he had been doing for over two years, his wages were reduced and he was issued two written warnings with threats of dismissal for offences that he did not commit. In addition, he was suspended from work for three days (3, 4 and 5 April 2006) without pay. It should be mentioned that these three workers are the main SITRAP activists on the plantation and had already been designated as grass-roots union leaders by the membership. Mr Oscar Hernández suffered a substantial reduction in his wages since joining the trade union.

474. As a result of all this persecution, on 4 April 2006 a group of six workers went to the SITRAP offices to withdraw their membership. All of them said that their supervisors knew that they were going to SITRAP to withdraw from membership and that they had been given unpaid leave for that purpose. What is strange is that all of them were paid for that day as if they had been at work. The situation has not changed to date. Persecution of trade union members is continuing and the foremen on the plantation are pursuing their efforts to get the workers to leave the trade union. The enterprise grants them leave for the purpose of meeting with groups of workers at any time, and the members live in fear of being dismissed at any time.

475. As regards another Chiquita supplier, the Teresa plantation owned by Banacol de Costa Rica, the first list of members was submitted to the office of the plantation on 22 November 2004 and the enterprise immediately launched a campaign against the trade union and its members. In order to get them to leave the trade union, the enterprise is using members of the executive committee of the solidarist association and the permanent workers' committee of the plantation. These workers are paid for a day's work at good rates to carry out these anti-union activities. The same is being done by foremen, who have transferred many members from their usual tasks, bringing about drastic reductions in their wages, with the result that some of them were compelled to leave the trade union. On 3 December 2004, SITRAP sent a note to the head of the Labour Relations Department requesting a meeting to discuss the situation that had arisen on the plantation. A conciliation meeting was held on 22 December 2004, but the enterprise failed to

implement what little was agreed upon at the meeting during the following weeks and months. Persecution of trade union members is continuing on the plantation, and therefore many have preferred to withdraw from membership or leave the enterprise. There are at present only three members left, who suffer discrimination and are constantly verbally insulted by their supervisors and the manager. Moreover, they are assigned more arduous and more difficult tasks for lower wages.

VI. Blacklists

476. Repression of union members in the banana sector is so severe that once they have joined a trade union and been dismissed they are generally not able to find another job in other banana enterprises. These companies exchange information on membership and keep a list of all unionized workers. Members of trade unions are systematically reported to other enterprises in the banana and related sectors, such as pineapple exporters, so that they are not given another job or their employment is frozen. The same occurs when a worker files a complaint with the courts. Trade union member Samuel Contreras Carrión, who was dismissed from Cobal, has tried to find a job on other plantations and been told that he has been blacklisted.

B. The Government's reply

477. In its communication of 21 December 2006, the Government states that it is serious in its statements and that it is committed to seeing them through in the time period allowed it by the democratic, open and participative regime, subject to those procedures, laws and rules ensuring effective action. The complaints contain rash allegations of violation of trade union rights which are not backed by the necessary evidence in order to exercise the right to a legitimate defence. In this regard, the Government does not share the interest of the complainant organizations in seeking recourse to this international organization to express their opposition to the prevailing rule of law and legality without further justification, and with the sole intent of increasing their chances of winning the action by taking it to an international level. The complainant organization puts forward (in a disorganized fashion) a series of observations that have been examined by the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations in their periodical comments with regard to the application of Convention No. 98 and Case No. 2104 which involves, among other things, the issue raised by the complainants with regard to the use of a plea of unconstitutionality against collective agreements in the public sector. For this reason, the Government of Costa Rica requests that all of its arguments concerning the application of Conventions Nos 87 and 98 and its efforts to ensure the effective application of those instruments be compiled.

478. Under the political Constitution, the Government is elected by the people, is representative, periodical and responsible. It is exercised by three distinct and independent authorities: the executive, the legislative and the judicial authorities. None of the authorities may delegate the exercise of functions attributed to them. Against this background, the Constitution states that public officials are merely trustees of authority and cannot assume powers which have not been bestowed upon them by law. The complainant organizations appear to disregard this last point. In Costa Rica, the administrative and judicial procedures end when all stages, both administrative and judicial, have been completed, and not before. Omitting part of the due process of law established in the legislation, be it administrative or judicial, is tantamount to ignoring the Constitution. The complainant organizations contribute to this lack of respect, as they seek recourse to this body without having previously exhausted the procedural instruments provided for in substantive law, which amounts to improper use of the bodies of the ILO.

479. In this regard, the Government of Costa Rica states that it is more than willing to resolve administrative and judicial proceedings concerning allegedly unfair labour practices such as those referred to by the complainants, through the definition of reasonable policies protecting the rights of unionized workers, in accordance with the constitutional guarantees of due process and legitimate defence. As can be seen from the report of the National Directorate of Labour Inspection, a body within the Ministry of Labour and Social Security which is responsible for ensuring effective compliance with social and labour legislation, without attempting to impose measures falling within the competence of courts of law or of representatives of the banana enterprises referred to in the case in question, each of the cases has been handled in accordance with the law.

480. The Government recalls that, by virtue of the rule of law prevailing in the country, article 153 of the political Constitution provides that the judicial authority, in addition to its other constitutional functions, shall hear civil, criminal, commercial, labour and administrative cases, irrespective of their nature or the status of the persons involved, to reach final conclusions and to execute their judgements with the assistance of the law enforcement forces if necessary. In accordance with the principle of separation of powers, the Government states that it had no interest whatsoever in refusing to mediate in accordance with the law, much less in stopping mediation, with regard to the situations referred to by the complainant organization.

481. This is clear from the detailed report issued by the National Labour Inspection Directorate, including the instructions issued to hold the necessary inspections on site, in order to establish the facts and proceed in accordance with the law. In this respect, it is important to point out with regard to the administrative proceedings for the reinstatement of a trade union official, that, aware of the need to improve the trade union protection provided for in the labour legislation, the Executive has submitted to the Legislative Assembly a draft amendment to the chapter on trade union protection of the Labour Code, which is currently on the parliamentary agenda under file No. 14676. These amendments are intended to expand the legal protection of unionized workers and workers' representatives in order to strengthen and guarantee the right to organize of Costa Rican employees, as well as the free exercise by trade union officers of their representative functions.

482. Unions are thus afforded the opportunity to give their opinion concerning the formulation and application of government policies which could affect their interests. Unions are also given a major role during conciliation procedures and economic and social collective disputes. The scope for action by unions and their representatives is thus enlarged. In addition, the draft amendments to the Labour Code establish a procedure which must be observed by every employer prior to a justified dismissal; failure to do so will result in the dismissal being null and void. In that case, the worker would be able to seek reinstatement with entitlement to unpaid wages. An accelerated judicial procedure is also being introduced which can be used by both union leaders and members in the event of dismissal for reasons linked to their union activities, and which would address the comments concerning the slowness of procedures in cases of anti-union discrimination and the need to expand legal protection for union representatives.

483. Another innovation which will be made by the reform is the introduction of joint liability of unions, federations and confederations of workers or employers for damages and prejudice that they have caused through tortious conduct (duly provided for under the legislation). The proposed reform thus aims to include all the situations relating to freedom of association which occur in practice by establishing special protection and legal security for persons exercising the fundamental right to organize.

484. In addition, and in keeping with the wish to ensure that judicial procedures are flexible and swift, the Government reports that a Bill to reform labour proceedings (file No. 15990) is

currently on the parliamentary agenda. This Bill is the result of work carried out involving magistrates and principal and alternative magistrates of the Second Chamber of the Supreme Court of Justice, labour judges, experts in labour law, officials of the Ministry of Labour and Social Security and representatives of employers' organizations and the trade union sector. All the social partners contributed to this proposal, which seeks to regulate the issues it addresses in a balanced fashion, taking account of the varied interests at stake, and to stand as an effective tool for the resolution of the various conflicts which arise within the world of work.

485. Important aspects of the Bill relating to issues that come under "special labour jurisdiction" include the fact that it resolves various questions, such as those brought up by the complainant organization with regard to the slowness of procedures in trade union cases. It should be pointed out here that a special procedure for the protection of persons with specific protected status and respect for due process has been established. This is an extremely expeditious procedure, similar to a claim for the enforcement of constitutional rights *(amparo constitucional)*, involving the automatic, but revisable, suspension of the application of the decision. The following categories of individual are covered by this procedure: pregnant or breastfeeding women, workers enjoying trade union immunity, victims of discrimination and, more generally, any public or private sector worker upon whom any type of immunity has been bestowed through law or through a collective instrument. Furthermore, collective procedures have been simplified, and a special process has been established for the official designation of situations as strikes.

486. It should be borne in mind that section 422 of the Bill lays down the principle of giving priority to oral hearings. The principle of oral proceedings humanizes the procedure and allows the application of other principles such as immediacy, specialization and promptness. Accordingly, and owing to the significant joint effort made by the executive and judicial authorities and the main social partners, with guidance provided through the technical assistance of the ILO, the Government of Costa Rica hopes that, once it has been analysed and studied by the Legislative Assembly, the Bill will become law in the Republic in the near future. The Government therefore regrets the number of subjective observations issued by the complainant organization with regard to the case in question and, in order to contribute to the analysis of the complaints being carried out by this international body, it fully associates itself with the reports issued by the Director-General of Labour Inspection concerning the cases in question. In addition, in order to reach a solution, the Government forwards the comments received from the representatives of the enterprises referred to in the complaint.

Report of the National Directorate and General Labour Inspectorate

487. Concerning the complaint presented by SITAGAH, SITRAP, SITRACHIRI and COSIBA CR, containing allegations of violations of trade union rights in several enterprises in Costa Rica, I inform you of the following:

(1) After a careful examination of the complaint, which contains a basic and general expression of discontent by the complainants against the Costa Rican legal system and the manner in which trade union violations are handled, owing to cumbersome proceedings and inefficiency of the administrative and judicial authorities, despite the fact that a number of measures have been taken, including constitutional rulings Nos 5000-93, 3421-94, 3869-94, 712-95, ratification of international Conventions by our country, the adoption of instruments such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights, and at the administrative level, the promulgation in 1943 of the Labour Code, the Organic Act concerning the Ministry of Labour and Social Security, and others.

(2) Specifically, the complaint states that in many cases the legislation is obsolete and ineffective, given that in practice the enterprises against which the complaint was presented find ways of evading compliance with the decisions of both the administrative and the judicial authorities. In addition, they cite the absence of up to date legislation which would provide more rapid protection of trade union rights to workers in Costa Rica. The report goes on to describe in detail the procedure provided for in legislation in cases of unfair labour practices (anti-union persecution).

In addition, the National Director and General Labour Inspector provides the following information: Anti-union practices at the banana plantations in Cahuita and Tortuguero. […] Report No. DRHA-0717 of the Chief of Huetar Atlántica Region states the following: in the present case, in July 2004, a conciliatory hearing was held at the cantonal office of Pococí between representatives of the Desarrollo Agroindustrial de Frutales enterprise and of the SITRAP trade union. At that hearing, the employers' representatives did not recognize the trade union committee. In August 2005, the Pococí office summoned the enterprise and informed it of complaints that had been filed. On 20 February 2006, a hearing was held between the parties who agreed, among other things, to reintegrate a worker who had been dismissed.

488. The Government adds various reports presented by enterprises mentioned in the complaint.

Report of the General Manager of the Santa María del Monte, SA agricultural enterprise

– It is true that the enterprise carried out termination of employment with full (not partial) payment of benefits, affecting all of the workers on the plantation; their employment benefits were paid in full. The reason for this was explained. Given the difficult situation in the banana sector, we had to re-engineer the workforce and adjust the number of workers to the level necessary to carry out the work. The workforce reduction was based on each worker's productivity – man or woman, Costa Rican or foreign. A total of 38 jobs were eliminated out of a workforce of some 140–145, without determining whether or not the workers were unionized. I am sure that the vast majority were not, and that at least 80 per cent were Costa Ricans. We had to change working conditions at the enterprise. This is an employer's right guaranteed by the political Constitution as part of the right of private property and control of the means of production. During the lay-off no distinction was made between unionized and non-unionized workers, or between members and non-members of solidarist associations. After the lay-offs, the enterprise hired the workers required according to the new re-engineering parameters and introduced a number of employment benefits that had not existed before, as productivity and punctuality incentive, as well as the payment of statutory benefits twice a year. This payment of termination benefit has transformed an expected entitlement into an acquired right of workers, and a long-standing dream of the Costa Rican workers has thus come true. The dismissed workers include those referred to, as well as many others. Four of them, César Antonio Amador Benítez, Manuel López Muñoz, Martín López Ortega and Noel Antonio Leiva Martínez, have instituted judicial proceedings against the enterprise (file No. 05-001002-0166-LA). While it is true that the migration authorities, in the exercise of the authority vested in them by law, detained some illegal migrant workers who were employed on the plantation, the rumour which attributes this to my doing is false. The Migration Act clearly stipulates the obligation of the police authorities to detain illegal workers in our country. Concerning the repeated accusations of persecution by management in the complaint, as well as those of lack of occupational safety and health measures, adequate equipment, irrigation work, bathrooms, etc., I cannot comment on this in the absence of information in the complaint giving specific cases, names and dates, which means that the company I represent cannot refer to these in order to exercise its right of defence against these unfounded accusations.

Desarrollo Agroindustrial de Frutalas SA enterprise

(1) Relations between the enterprise and the trade unions SITRAP and SITAGAH stem from the fact that some workers on our plantations are members of these trade unions; SITRAP currently has 104 members on various plantations and SITAGAH has 39, out of a total workforce of 3,441 on the plantations, and the two unions thus account for some 4.15 per cent of the workforce on the plantations. The vast majority of the workers support their permanent workers' committees, which they elected freely and democratically, and which for some years now have negotiated direct arrangements under sections 504–506 of the Labour Code. The Ministry has all the relevant records, since they have been approved in the Ministry offices which are responsible for filing and registering them. Despite the very low representativeness of these trade unions in the workforce of the company I represent, we have negotiated a number of conciliation agreements signed in your Ministry, which are attached, dealing with issues such as recognition of the right to join and form a trade union, freedom of movement and the right of assembly – provided that work is not obstructed – and complaints on several cases, all in accordance with ILO Conventions Nos 87, 98 and 135 and Recommendation No. 143, which have force of law in our country.

(2) We have always responded to the different complaints presented by the trade unions to the enterprise on a number of occasions; some have been resolved and others have not, as is normal in worker–management relations, whether individual or collective, given that the trade unions often attempt to disregard the employer's authority and disciplinary power, and the worker's concomitant duty of subordination, which are the fundamental elements of the individual contract of employment, as recognized in labour law and stipulated in section 18 of the Labour Code.

(3) The SITAGAH trade union has even filed a complaint against the enterprise with the Heredia Labour Inspectorate for alleged anti-union persecution and unfair labour practices; the complaint was shelved by mutual agreement between the parties, which shows that we have always negotiated on the issues raised at our workplaces and involving trade union members. This agreement, along with others, which are referred to in official records deposited with your Ministry, contradict the complaint in question, which we believe is an attempt to damage not only the image of the enterprise – which exports most of its bananas to Europe, where these are highly sensitive issues among buyers – but also that of our country, as a nation committed to the rule of law in which laws, and not power or brute force, prevail.

(4) It is not true that the company I represent violates the Conventions on freedom of association applicable to us. We deny most emphatically that there is the level of conflict alleged in this complaint, which is intended to give weight to a complaint that lacks substance. Trade unions cannot only engage in collective bargaining unless their membership reaches 33 per cent of the workforce, as provided in section 56 of the Labour Code; until then, the free (non-unionized) workers avail themselves of the right afforded under ILO Convention No. 135 to appoint their representatives in the enterprise (referred to in our legislation as "permanent workers' committees") and to negotiate collective settlements with them (referred to as "direct arrangements") governing collective relations at the workplace. With their very small membership, trade unions cannot claim to have the same rights as the committees, which enjoy massive support among the workers. Our labour legislation does not regulate, and hence does not recognize, the so-called "grass-roots committees" which the trade unions seek to impose on the enterprise. The trade unions are using this as a means of replacing or opposing the "permanent workers' committees"; ILO Convention No. 135 refers to both: when there is a representative trade union, the representatives are trade union representatives (the requirement for representativeness being 50 per cent of the workforce in our context) and, where the membership is not large enough (which is the case here) it is for the majority, i.e. the non-unionized workers, to set up permanent committees. This has been a permanent source of disagreement with the complainant organizations based on the fact that the enterprise is backed by the law. Representation of members is expressly regulated by section 360 of the Labour Code.

(5) The case of Ms Veneranda Vaquedano Oliva and Ms Modesta Barrera González was resolved several months ago. The situation of Ms Modesta Barrera González was

resolved as follows, as indicated in the record of the meeting signed at the Ministry at 9 a.m. on 3 October 2006: (a) "There have been no reprisals or persecution of any kind, to the extent that Ms Modesta Barrera González, at her request, will be assigned tasks commensurate with her physical capacity and thus, as of 4 October, will be assigned the task of preparing ties and labels in the same packing plant, since she does not wish to be transferred to another packing plant. We also undertake to speak to her foreman, Mr Sergio Cerdas, about his behaviour towards Ms Modesta Barrera González." (b) Previously, in a record signed on 16 August 2006, paragraph 2, concerning a situation that arose when Ms Modesta Barrera presented two medical certificates from the Ebais (health centre) on the same day, which is evidently irregular, it was ascertained which of the two was valid and hence "no action will be taken in this case". This could constitute serious misconduct, as it involved fraud, and therefore it was investigated. (c) Paragraph 15 of the record notes, in regard to the accommodation assigned to that worker, that "the accommodation was assigned by direct arrangement between Ms Barrera and the area manager. The trade union states that the enterprise acted in good faith when it assigned the accommodation".

(6) Concerning the dismissal of Mr Heriberto Guido González, the records show that he had been working on the Islas plantation since 21 May 2001. On 23 October 2004 he was dismissed for being absent on 3, 13 and 28 August 2004, in accordance with section 81(g) of the Labour Code, but was reinstated on 20 December 2004 and his record of employment recognized by the enterprise. It was agreed to reinstate the worker, with payment of his unpaid wages since 23 October and the outstanding 2003–04 bonus, which would be paid – as was in fact done, on 30 December. All of the above records were signed by representatives of the enterprise and the trade union in the Ministry's labour relations department.

(7) The case of Mr Larry Zavala, which was pending before the court, was settled by agreement between the parties, as recorded in the file, which was closed.

(8) Mr Abel Jarquín González, referred to as a trade union "representative", is no longer working in the enterprise as he resigned voluntarily. All of the attached records refer to the presence of Mr Jarquín González, who is included among the signatories, and we therefore reject this accusation.

(9) In the case of Mr Germán Enoc Méndez, a conciliation agreement was reached in court.

Chiquita Brands Enterprise – Cobal Division and Chiquita Brands – Chiriquí Land Company

– Mr Teodoro Martínez: disciplinary proceedings were brought, and sworn statements obtained from witnesses testifying that Mr Martínez had insulted his immediate supervisor […] in front of other fellow workers. This was corroborated by a unionized worker who made a sworn statement in the presence of a public notary. Disciplinary proceedings were brought against Mr Martínez, who had ample opportunity for defence, and there was no doubt that he had committed the offence of which he was accused.

– Mr Amado Díaz Guevara: disciplinary proceedings were instituted against Mr Díaz for having failed to remove the shoots from 468 plants and informed his immediate supervisor that he had already completed the plot; in other words he had falsely claimed to have finished his work. There are documents which he signed and in which he admitted the fact (an on-site inspection duly signed by him and other workers), as well as statements of day labourers and management staff confirming both facts. Mr Díaz Guevara was given ample opportunities for defence through a disciplinary procedure and was informed sufficiently in advance to enable him to take appropriate steps and exercise fully his right to defence.

– Mr Pedro Calero Ruiz: at the time of his dismissal there was no official document attesting to his status as a trade union representative, as the trade union had not communicated that fact to any representative of the company. Despite this, the company voluntarily and spontaneously reinstated him on the plantation where he worked and awarded him unpaid wages without having received any court ruling or administrative decision to that effect. He is currently still a member of the trade union and freely engages in trade union activities, and works in the packing plant of the Oropel

plantation. In the case of Mr Evaristo Chavarría, the reduction in his wages was not due to any intention by the enterprise to bring about any deterioration in his remuneration, but resulted from an adjustment of working time to the legislation in force, which meant that he earned less by working only eight hours a day than if he regularly worked overtime. It has already been explained to SITAGAH on a number of occasions that overtime is not an acquired right of the workers, but is intended to meet the occasional needs of the enterprise, and the workers are expected to make an extra effort, irrespective of whether they are members of a trade union, as and when required; when it is not required the enterprise cannot create it artificially to cater to the workers' wishes. In the case of the *bachero*s, the workers who are in charge of looking after the bachelor quarters on the Sarapiquí plantations, a total of nine workers were affected by the adjustment of hours of work to eight hours a day, of whom only two were trade union members.

– Mr Juan Francisco Reyes: this worker presented a document from a state clinic belonging to the Costa Rican Social Security Fund (CCSS) to justify having been absent on a Saturday, but the document had been altered by adding his name under that of the CCSS; in order to ascertain the truth, a letter from the CCSS was obtained as evidence, certifying that the document had been tampered with by someone outside the Fund and was therefore false. Mr Juan Reyes was dismissed for using a false document to justify absence from work, following disciplinary proceedings in which he had ample opportunity for defence.

– Mr Ricardo Peck Montiel: was dismissed for just cause in accordance with section 81, paragraph I of the Labour Code, read together with sections 19 and 71, paragraph (b) of the Code, based on evidence obtained through due process, in which the general secretary of SITAGAH actively participated. The evidence concurred in showing that Mr Ricardo Peck had repeatedly failed to comply with the specifications issued by the enterprise concerning protection of fruit. In addition, he had a previous record of poor work performance and had not shown any interest in improving his work.

– In all of the cases of dismissal, the workers were previously informed and given a description of the offences attributed to them and afforded an opportunity for defence, including bringing in and interviewing witnesses and examining the documents, and all of the time limits and procedures laid down by the law were observed, account being taken also of ILO Convention No. 158 with regard to the imposition of disciplinary measures and the minimum considerations to be met from the standpoint of international labour and human rights law. All of the trade unions were given the necessary space and attention with a view to finding joint solutions with the enterprise to solve the union members' problems, in accordance with the principle of good faith which should prevail under the Regional Agreement, and thus they participated freely and transparently in all of the abovementioned procedures.

– Judicial decisions: concerning case No. 02-000616-0166-LA of the worker Leopoldo Alvarez Alvarado, the company fully implemented the operative part of the judgement, as shown by the proof in our possession.

– Concerning case No. 00-000031-0166-LA of the worker Reinaldo López González, company representatives and the complainant's lawyer are currently in the process of drawing up a document that will satisfy the complainant's claims, to be presented in the very near future to the competent judicial authority, along with a request that the case be closed.

– Concerning case No. 98-003283-0166-LA of Mr Manuel Murillo de la Rosa, it is still pending before the court, and no final judgement has been handed down, and thus there has been no non-compliance by the company in this case either.

– The company does not keep "blacklists" of any kind, given that this is an illegal practice according to the internal legislation under the Regional Agreement, as well as our Code of Conduct, as such lists encourage discrimination on grounds of membership in a trade union. In the specific case of Mr Samuel Contreras Carrión, as may be seen from the record drawn up in the Ministry of Labour and referred to in the complaint, there have been no assertions by any representative of a company other than ours expressly and conclusively stating that the worker allegedly affected could not obtain a job in the area

because of an instruction or direct recommendation on the part of our company to that effect, and thus this complaint is completely vague and unfounded.

– In the case referred to in the complaint, an examination of the specific cases has shown that the company has never "invented" disciplinary offences, but that we have always acted in accordance with the law and with justice when imposing discipline in an equitable and disciplined manner, without any consideration as to whether the worker concerned belongs to a trade union.

– The Department of Labour Relations and its accredited representatives on the plantations maintain an attitude of respect and conciliation with regard to the workers and their representatives, hence their participation in all processes having to do with the employment relationship, not only in the area of disciplinary measures, but also in regard to negotiations with workers, the organization of social activities such as parties and celebrations, the promotion of sports activities among employees and prompt and personal attention to workers who have any doubts or concerns regarding their labour rights.

– Concerning the collective dispute submitted by trade union members and the complaints concerning Chiriquí Land Company, a subsidiary of Chiquita Brands, the court proceedings filed against the company were dismissed and closed by the Labour Court of the Province of Limón; this decision was accepted by the trade union, since it did not appeal against it, given that the judicial authority, having carefully examined all of the evidence submitted both by the company and by the trade union, concluded that there was no dispute between the company and the workers and hence no violations of rights requiring an investigation. In any case, any dispute that might have existed was duly resolved through negotiation of the system of work organization known as *Caja Integral* (Integral Box), which was freely and voluntarily agreed upon between the SITRACHIRI trade union and the company in a cooperative negotiation process in which the common and individual interests of the trade union, the workers and the company were met. In addition to putting a final stop to any labour dispute between the company and the trade union and any related complaint, this system has brought about an obvious and tangible increase of up to 40 per cent in the earnings of the workers of the Chiriquí Land Company and a significant reduction in working time, which benefits all the parties, as it is conducive to a sustainable improvement in labour relations, which is a key aspect of our company's philosophy in regard to labour relations involving all of our workers.

Conclusion

The complaint presented contains a number of vague assertions and errors which we reject categorically as they are inaccurate and devoid of truth. There has been no persecution, coercion, discrimination or threats of any kind against the workers, and there is frank, open, constant and fluid dialogue between SITAGAH and representatives of the company, and thus its members are always granted leave to attend meetings, and union representatives' complaints are heeded and they are received in meetings in order to seek solutions to their problems. We can prove that over 50 meetings were held during the year with the different trade unions, at which we have addressed issues of common interest. Moreover, we have respected the position of SITRACHIRI as the sole representative of the workers in Chiriquí Land Company, established in accordance with the law, and have endeavoured to involve it in the changes and improvements to everyone's benefit, as shown by the negotiations for the abovementioned "Integral Box" system of work organization, as well as other negotiations that took place in a peaceful and harmonious manner.

489. The Government affirms that its actions clearly show that it explicitly deplores any anti-union practices and does not hesitate to apply the full rigour of the law in cases in which such illicit acts are proven to have occurred. In the light of the arguments of fact and law set forth above, it requests the Committee to reject in full the complaint presented by the banana trade unions of Costa Rica: SITAGAH, SITRAP, SITRACHIRI and COSIBA CR.

490. In its communication of August 2007, the Government reiterates its observations made in December 2006, and encloses a report from the Desarollo Agroindustrial de Frutales SA enterprise which states the following:

> In my capacity as legal representative of Desarrollo Agroindustrial de Frutales SA and at the request of my client, permit me to reply as follows to the complaint presented to the ILO by the trade unions SITRAP and SITAGAH against the company I represent:
>
> (1) Both trade unions have members at the workplaces (plantations) belonging to my client; we have attended periodical conciliation meetings with these trade unions at the offices of this Ministry, with mediation by the Labour Relations Department, whose officials in San José, Guápiles, Siquirres, Limón and Heredia are best placed to attest to the fact that we have never refused to engage in dialogue with these trade unions concerning their members' problems.
>
> (2) In our note addressed to you on 21 November 2006, we gave detailed explanations on this subject, with documents attached. The complaint contained in the new communication is directed at the Ministry rather than the company I represent. The plantations belonging to my client have permanent workers' committees appointed by free, direct and democratic ballot by the majority of the workers, which are registered with the Labour Relations Department of the Ministry of Labour; these committees are authorized by their constituents to sign direct arrangements in accordance with sections 504 et seq. of the Labour Code; these arrangements are also registered with the Ministry.
>
> (3) The complainant trade unions have not met the membership requirement of 33 per cent of the workforce stipulated in section 56 of the Labour Code in order to submit proposals for collective bargaining to the enterprise and hence have not achieved representativeness; whereas the permanent workers' committees are supported by over 90 per cent of the workers. This is a problem that concerns the workers alone, in which the enterprise does not interfere. The complaint is against the appointment of a member of the permanent workers' committee of the Chira plantation (which includes four plantations or workplaces), belonging to my client.
>
> (4) According to the attached documents, which are in the possession of the Ministry, the problem is as follows:
>
> (a) On 10 September 2006 a worker was appointed as a member of the committee by a workers' assembly held by the trade union, in an act of open interference with the representativeness of the committees, and attended only by the workers of the Chira 2 plantations and held on a Sunday, in the absence of the majority of the plantation workers, bearing in mind that the three-member committee is to represent the four plantations (1, 2, 3 and 4).
>
> (b) In response to this appointment, bypassing the majority of workers, a new assembly was held on 18 September 2006 which approved the following workers as permanent members of the committee: Mr Dennis Boniche Rodrígues, Mr Heymar García Villegas and Mr José Dolores Ponce Jiménez.
>
> (c) A new assembly, held on 11 December 2006, appointed the worker Freddy Méndez Cuevas to the committee.
>
> (d) The enterprise was summoned to a conciliation meeting on 12 January 2007 on this issue at the regional office of the Ministry of Labour in Guápiles. The enterprise was represented by Mr Luís Cardona Meza Plascencia and Ms María Lourdes Valverde, officials responsible for labour relations, and the undersigned as legal representative and labour adviser of the enterprise; the workers Rafael Quesada Esquivel, Dennis Boniche Rodríguez, José Dolores Ponce and Heymar García Villegas attended as members of the permanent committee of the Chira plantations (1, 2, 3 and 4). The trade union submitted a statement in a separate document.
>
> (e) As is clear from the record, the enterprise submitted a separate statement from that of the committee, confirming its respect for the workers' right to elect their representatives freely and democratically, without interference by the employer. The committee confirmed its approval of the last assembly that had been held.

(5) The enterprise's position in regard to this complaint is that it is an internal affair concerning the workers in which it should not participate or take a stance either in favour or against. We do believe that the Ministry should, from a legal standpoint, respect the last election held in keeping with the rules for this type of collective decision, and that the trade union should refrain from interfering with the appointment, actions and functions of the committees, and vice versa.

(6) Concerning the investigations or procedures carried out by the Ministry, these are legal procedures which must take their normal course in each case; the company I represent has always been respectful of these procedures, in defence of a democratic country which guarantees due process (article 41 of the political Constitution). The most recent administrative proceedings concerning a complaint of alleged anti-union persecution of SITRAP against my client culminated in a decision in favour of the enterprise, No. RHA-0643-2006, issued at 11 a.m. on 9 August 2006 at a conciliation meeting held with the trade union, which attests to the fact that we do respect freedom of association.

(7) In regard to the vague accusation, without giving names or specific facts, making it impossible to build an adequate defence, of denial of access to the premises to trade union leaders, it is not true that the company did not allow access to a trade union leader, as provided in section 360 of the Labour Code and ILO Conventions Nos 87, 98 and 135. At the conciliation meeting with SITRAP referred to in item (6) above, held at the regional office of the Ministry in Gúapiles on 10 March 2006, paragraph 1 on "access to the plantation" proposed a procedure to allow access to trade union leaders and up to three other officials. The complaint can thus be considered to be settled, as it is no longer timely or relevant. The documents of the case are attached. The SITRAP and SITAGAH trade unions were thus not acting in good faith when they presented a complaint on these issues to the ILO Committee on Freedom of Association in October 2006, when they had been settled through conciliation with the enterprise since February 2006.

(8) Conciliation was also reached on disagreements with SITAGAH in a complaint filed with the office of the Ministry in Heredia on 11 April 2006, by decision No. DNI-178-2006 issued by the Ministry at 9 a.m. on 29 May 2006, thus closing the case.

We thus reject all the accusations; the company I represent is a serious and responsible enterprise which abides by the legislation in force and, through a considerable entrepreneurial effort, provides employment to over 5,000 workers and exports its bananas to the benefit of the country and its inhabitants.

C. The Committee's conclusions

491. *The Committee observes that in this case the complainant organizations allege the slowness and ineffectiveness of administrative and judicial procedures in cases involving anti-union practices, the impossibility of exercising the right to strike given that most strikes are declared illegal by the judicial authority, discrimination in favour of permanent workers' committees to the detriment of trade unions and numerous acts of anti-union discrimination in enterprises in the banana sector.*

492. *As regards the allegations concerning the slowness and inefficiency of administrative and judicial procedures in cases involving anti-union practices, and the impossibility of exercising the right to strike given that most strikes are declared illegal by the judicial authority, the Committee notes that the Government states that: (1) it is more than willing to resolve the administrative and judicial proceedings concerning alleged unfair labour practices such as those referred to by the complainant organizations, through the definition of reasonable policies protecting the rights of unionized workers, in accordance with the constitutional guarantees of due process and legitimate defence; (2) by virtue of the rule of law prevailing in the country, article 153 of the political Constitution provides that it shall be the responsibility of the judicial authority to examine civil, criminal, commercial, labour and administrative cases, irrespective of their nature and the status of those involved, to reach final conclusions and to enforce its rulings; (3) concerning the proceedings to reinstate a trade union official, the executive authority, aware of the need*

to improve trade union guarantees, has submitted to the Legislative Assembly draft amendments to the chapter on trade union protection of the Labour Code, which are currently on the parliamentary agenda under file No. 14676, the intention being to expand legal protection of unionized workers and workers' representatives; (4) the intention is to establish a procedure that must be observed by employers prior to justified dismissal, failing which the worker would be able to seek reinstatement with entitlement to unpaid wages; an accelerated judicial procedure would be introduced which could be used by trade union officials and members in the event of dismissal for reasons linked to their union activities, which would address the comments concerning the slowness of procedures and the need to expand legal protection for union representatives; (5) a Bill to reform labour proceedings is currently being examined (No. 15990), which is the result of work carried out involving magistrates, labour law experts, officials of the Ministry of Labour and Social Security and representatives of employers' organizations and the trade union sector, and which provides for a special procedure for the protection of persons with specific protected status, which is extremely expeditious; it also simplifies collective procedures and establishes a special procedure for the designation of strikes.

493. *The Committee notes with interest the Government's statement that it is more than willing to resolve administrative and judicial proceedings concerning allegedly unfair labour practices such as those referred to by the complainants, through the definition of reasonable policies protecting the rights of unionized workers, in accordance with the constitutional guarantees of due process and legitimate defence. However, the Committee emphasizes that the measures and bills which it mentions have failed to materialize after several years. Recalling that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has, for several years, referred to the slowness and ineffectiveness of administrative and judicial procedures in cases of anti-union practices, the Committee, like the CEACR, urges that the various bills currently in progress will be adopted in the very near future and that they will be in full conformity with the principles of freedom of association.*

494. *In regard to alleged discrimination in favour of the permanent workers' committees to the detriment of the trade unions (for example, the minimum membership requirement in order to be established, the requirement to be a national in order to be a member of the executive committee, formal requirements for forming a trade union as opposed to a simple note to the Ministry of Labour in the case of the permanent committees, direct arrangements concluded with employers by the permanent workers' committees, and the hugely disproportionate numbers of direct arrangements compared to collective agreements, etc.), the Committee recalls that Article 5 of Convention No. 135 provides that where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage cooperation on all relevant matters between the elected representatives and the trade unions concerned and their representatives. Noting that the Government has not communicated its observations in this regard, the Committee requests it to send them without delay.*

Allegations concerning acts of anti-union discrimination in banana sector enterprises

Case of Chiquita

Chiquita – Cobal

495. *The Committee observes that the complainant organizations allege that the enterprise has failed to comply with a framework agreement in which it undertakes to respect freedom of*

association and, in particular, dismissed the following trade union officers for anti-union reasons: Mr Teodoro Martínez Martínez, Mr Amado Díaz Guevara (a member of the Committee on the Implementation of the Regional Agreement between the IUF/COLSIBA and Chiquita), Mr Pedro Calero Ruiz (the enterprise undertook to cancel the dismissal but has not done so), Mr Vicente Rodríguez Cubero, Mr Juan Francisco Reyes and Mr Ricardo Peck Montiel; that it reduced Mr Evaristo Chavarría Campos' wages by 30 per cent, and that the enterprise failed to implement court rulings ordering reinstatement of trade union officials Mr Reinaldo López González and Mr Manuel Murillo de la Rosa, as well as a ruling ordering it to cease harassment and persecution of trade union official Mr Leopoldo Alvarez Alvarado and to pay him his unpaid wages.

496. *In this regard, the Committee notes that the Government forwards the following information sent by the enterprises:*

– *Mr Teodoro Martínez Martínez. Disciplinary proceedings were brought and two sworn statements obtained from witnesses testifying that he had insulted his immediate supervisor. During the disciplinary proceedings he was given ample opportunity for defence and there was no doubt that he had committed the offence of which he was accused;*

– *Mr Amado Díaz Guevara. Disciplinary proceedings were brought for having failed to remove the shoots from 468 plants and falsely claiming to have completed his work. He admitted this in a document. During the disciplinary proceedings he was given ample opportunity for defence.*

– *Mr Pedro Calero Ruiz. At the time of his dismissal there was no official document attesting to his status as a trade union representative. He was reinstated and awarded his unpaid wages. He is still a trade union member and freely engages in trade union activities.*

– *Mr Juan Francisco Reyes. He was dismissed for having used a falsified document to justify absence from work. Disciplinary proceedings were brought, during which he was given ample opportunity for defence.*

– *Mr Ricardo Peck Montiel. He repeatedly failed to comply with the specifications issued by the enterprise on the protection of fruit. He had a previous record of poor work performance and had not shown any interest in improving.*

– *Mr Evaristo Chavarría Campos. His wages were reduced owing to an adjustment of hours of work to the legislation in force; since he now works an eight-hour day he earns less than when working regular overtime. Overtime is not an acquired right. Nine workers were affected by the adjustment of hours of work to eight hours; only two of them are trade union members.*

– *Mr Leopoldo Alvarez Alvarado. The operative part of the judgement was fully implemented by the company.*

– *Mr Reinaldo López González. Company representatives and the worker's lawyer are currently working on a document to satisfy the complainant's claims, which will soon be submitted to the judicial authority with a request that the case be closed.*

– *Mr Manuel Murillo de la Rosa. This case is pending before the court. There has not been a final judgement to execute.*

497. *In these circumstances, the Committee requests the Government to inform it: (1) whether trade union officials Mr Teodoro Martínez Martínez, Mr Amado Díaz Guevara, Mr Juan*

Francisco Reyes and Mr Ricardo Peck Montiel have initiated judicial proceedings concerning their dismissals and, if so, of the status of these proceedings; (2) of the grounds for the dismissal of Mr Reinaldo López González and the reasons why the court ruling ordering his reinstatement was not executed, and to send it a copy of the agreement that is to be signed by the enterprise and the worker; and (3) of the grounds for the dismissal of Mr Manuel Murillo de la Rosa and the status of the court proceedings concerning his dismissal.

Chiquita – Chiriquí Land Company

498. *The Committee observes that the complainant organizations allege that the enterprise failed to apply the eighth collective agreement in force, that the workers held a 24-hour strike that was declared illegal, and that they filed complaints with the courts years ago, without any judgement being handed down, that nine trade unionists were dismissed on 1 September 2004 (Mr Santiago Pineda González, Mr Mauricio Masis Suazo, Mr Julio Bustos Cortés, Mr Juan Ramón Ortiga Salinas, Mr Yeffry Valle Romero, Mr Reinaldo Martínez Arguello, Mr Bayardo López Guido, Mr Hader Palacio Cano and Mr Herminio Méndez Miranda), as well as four trade union members (Mr Lester Quiñónez Mondragón, Mr Jaime Martínez Urbina, Mr José Luis Martínez Chavarría and Mr Juan Martín Franco Muñoz), and that other members were issued warnings for no reason.*

499. *In this regard, the Committee notes that the Government states that: (1) the judicial proceedings instituted against the company were dismissed and closed by the Labour Court of the Province of Limón; (2) the court decision was accepted by the trade union, since it did not appeal against it, given that the judicial authority, having carefully examined all of the evidence submitted by both the company and the trade union, concluded that there was no dispute between the company and the workers; (3) there are thus no violations of rights requiring an investigation, since in any case, any dispute that might have existed was duly resolved through negotiation of the system of work organization known as* "Caja Integral" *(Integral Box), which was freely and voluntarily agreed upon between the SITRACHIRI trade union and the company in a cooperative negotiation process in which the common and individual interests of the trade union, the workers and the company were met; (4) in addition to putting a final stop to any labour dispute between the company and the trade union and any related complaint, the new system has brought about an obvious and tangible increase of up to 40 per cent in the earnings of the workers of the Chiriquí Land Company; and (5) there has been no persecution, coercion, discrimination or threats of any kind against the workers, and there is a frank, open, constant and fluid dialogue between SITAGAH and the company representatives, and thus its members are always granted leave to attend meetings, the complaints of representatives are heeded and they are received in meetings in order to seek solutions to their problems.*

500. *In these circumstances, the Committee requests the Government to inform it whether, in the process of the negotiations which the company says it has conducted with the trade union, it was decided to reinstate the dismissed trade unionists and members and, if not, to inform it of the grounds for the dismissals and whether judicial proceedings have been initiated in this regard.*

Case of Desarrollo Agroindustrial de Frutales SA enterprise

501. *The Committee observes that the complainant organizations allege that there is no possibility of engaging in collective bargaining, and that the enterprise persecutes and discriminates against SITAGAH members. Specifically, they allege: (1) the dismissal of Mr Jorge Luis Rojas Naranjo, Mr Heriberto Guido González (reinstated three months later), Mr Larry Zavala Alvarado (reinstated a year later) and Mr Germán Enoc Méndez;*

(2) that management said it would do everything it could to get the workers Ms Veneranda Vaquedano Oliva and Ms Modesta Barrera González to leave the trade union; and (3) management has threatened to have the police remove members of the trade union committee who visit workplaces, and there have been verbal attacks on trade union officer Mr Abel Jarquín González.

502. *In this regard, the Committee notes that the Government forwards the observations sent by the enterprise, stating that: (1) relations between the enterprise and the trade unions SITRAP and SITAGAH stem from the fact that some workers on its plantations are members of these trade unions; SITRAP currently has 104 members on various plantations and SITAGAH has 39, out of a total workforce of 3,441 on the plantations, and the two unions thus account for 4.15 per cent of the workforce. The vast majority of the workers support their permanent workers' committees, which they elected freely and democratically and which for some years have negotiated direct arrangements under sections 504–506 of the Labour Code. Despite the very low representativeness of these trade unions in the workforce, negotiations have taken place on issues such as recognition of the right to join and form a trade union, freedom of movement and the right of assembly; (2) the company has always responded to the different complaints presented by the trade unions; some have been resolved and others have not, as is normal in worker–management relations, whether individual or collective; SITAGAH even filed a complaint against the enterprise with the Heredia Labour Inspectorate for alleged anti-union persecution and unfair labour practices, which was shelved by mutual consent between the parties, which shows that it has always negotiated on the issues raised at its workplaces and involving trade union members; (3) trade unions cannot engage in collective bargaining unless their membership reaches 33 per cent of the workforce, as prescribed by section 56 of the Labour Code. Meanwhile, non-unionized workers avail themselves of the right afforded under ILO Convention No. 135 to designate their representatives vis-à-vis the enterprise (referred to in our legislation as "permanent workers' committees") and to negotiate collective settlements (referred to as "direct settlements") governing collective relations at the workplace. With their very small membership, the trade unions cannot claim to have the same rights as these committees, which enjoy the massive support of the workers. Labour legislation does not regulate, and hence does not recognize, the so-called "grass-roots committees" which the trade unions seek to impose on the enterprise, in an attempt to replace or oppose the "permanent workers' committees"; ILO Convention No. 135 refers to both: when there is a representative trade union, the representatives are trade union representatives (the requirement for representativeness being 50 per cent of the workforce) and, where there are not enough members (which is the case here), it is for the majority, i.e. the non-unionized workers, to set up permanent committees; (4) the case of Ms Veneranda Vaquedano Oliva and Ms Modesta Barrera González was resolved several months ago. The situation of Ms Modesta Barrera González was resolved as follows, as indicated in the record signed in the Ministry at 9 a.m. on 3 October 2006: "There have been no reprisals or persecution of any kind, to the extent that Ms Modesta Barrera González, at her request, will be assigned tasks commensurate with her physical capacity, and thus, as of 4 October, will be assigned the task of preparing ties and labels in the same packing plant, since she does not wish to be transferred to another packing plant. We also undertake to speak to her foreman, Mr Sergio Cerdas, about his behaviour to Ms Modesta Barrera González."; (5) concerning the dismissal of Mr Heriberto Guido González, he was dismissed on 23 October 2004 for being absent on 3, 13 and 28 August 2004, in accordance with section 81(g) of the Labour Code, but was reinstated on 20 December 2004, with payment of unpaid wages; (6) the case of Mr Larry Zavala Alvarado, which had been pending before the court, was settled by agreement between the parties, as recorded in the file, which was closed; (7) Mr Abel Jarquín González no longer works in the enterprise, having voluntarily resigned; (8) the case of Mr Germán Enoc Méndez culminated in a conciliation agreement in court.*

503. *In these circumstances, as regards the impossibility of bargaining collectively, the Committee urges the Government to take all steps at its disposal so as to promote collective bargaining between the employers and their organizations on the one hand, and the organizations of workers on the other, in order to regulate the conditions of work in the enterprises concerned. The Committee also requests the Government to send its observations concerning the alleged anti-union dismissal of Mr Jorge Luis Rojas Naranjo and to indicate whether the conciliation referred to in the case of Mr Germán Enoc Méndez' dismissal involved his reinstatement.*

Case of Santa María del Monte SA agricultural enterprise

504. *The Committee observes that the complainant organizations allege anti-union dismissals of 16 workers, including one trade union official (Mr Inocente Aguilar Gamboa, Mr Armando Torres Espinoza, Mr Manuel López Munõz, Mr Erick Jarquín Castro, Mr Noel Leiva Martínez, Mr Deivis Antonio Amador Benítez, Ms Josefa López Jaimes, Mr César Antonio Amador Benítez, Mr Yanci Barahona Aguirre, Mr Bismarck Rodríguez Martínez, Mr Martin López Ortega, Ms Mireya Gutiérrez Taisagua, Ms Xiomara Aracelly Taisagua Dormos, Mr Alcides Reyes Palacios, Mr Fabio Amador Martínez and Ms Felipa Gutiérrez Taisagua) and the detention of a large number of workers – including some SITAGAH members.*

505. *In this regard, the Committee notes that the Government forwards information sent by the enterprise which states that: (1) it is true that the enterprise carried out termination of employment with full (not partial) payment of benefits affecting all of the workers on the plantation, who were paid their employment benefits in full; (2) given the difficult situation in the banana sector, the enterprise had to re-engineer the workforce and adjust the number of workers to the level necessary to perform the work; the workforce reduction was based on each worker's productivity – man or woman, Costa Rican or foreign. A total of 38 jobs were eliminated out of a total workforce of some 140–145, without determining whether or not the workers were unionized or members of solidarist associations; (3) working conditions had to be changed at the enterprise; this is an employer's right guaranteed by the political Constitution as part of the right of private property and control of the means of production. After the lay-offs, the enterprise hired the workers required according to the new re-engineering parameters and introduced a number of employment benefits that had not existed before, as a productivity and punctuality incentive, as well as the payment of statutory benefits twice a year. This payment of termination benefit transformed what had been an expected entitlement into an acquired right, thus making a long-standing dream of the Costa Rican workers come true; (4) the dismissed workers include those referred to in the complaint, as well as many others. Four of them, Mr César Antonio Amador Benítez, Mr Manuel López Muñoz, Mr Martín López Ortega and Mr Noel Antonio Leiva Martínez, have instituted judicial proceedings against the enterprise; and (5) it is also true that the migration authorities, in the exercise of the authority vested in them by law, detained some illegal migrant workers who were employed on the plantation (the rumour attributing this to the employer's doing is untrue). The Migration Act clearly stipulates the obligation of the police authorities to detain illegal workers in the country.*

506. *In relation to the alleged detention of several workers of the enterprise by the migration police, the Committee requests the Government to examine these allegations and send its observations in this regard. Moreover, in regard to the dismissal of 16 trade union members – according to the enterprise, as part of a total lay-off – and subsequent hiring of workers, the Committee does not have enough information to determine whether the dismissals were for anti-union reasons, and therefore requests the Government: (1) to initiate an investigation into the matter and, if such a reason is found, to take steps to ensure, through legal procedures, that the prejudice caused to the members concerned is compensated, including through their reinstatement if they so wish; and (2) to inform it of*

the total number of workers dismissed at the same time as the trade unionists referred to by the complainants in the Santa María del Monte SA agricultural enterprise, broken down into unionized and non-unionized workers, to keep it informed of the judicial proceedings under way referred to in the information sent by the enterprise, and to inform it whether there were any trade union members among the workers rehired by the enterprise.

Cariari and Teresa plantations owned by Banacol

507. *The Committee observes that the complainant organizations allege that: (1) from the time at which the authorities of the Cariari enterprise and the Ministry of Labour were informed of the workers' interest in joining SITRAP, management launched a campaign to get the workers to leave the union and took anti-union discriminatory measures against trade union officials and members; and (2) from the time at which the list of members was communicated to the enterprise, an anti-union campaign was launched on the Teresa plantation, and there are now only three members left, who are discriminated against. The Committee observes that the Government has not communicated its observations in this regard and requests it to send them without delay.*

Blacklists

508. *The Committee observes that the complainant organizations allege that repression of union members in the banana sector is so severe that once they have joined a trade union and been dismissed, they are generally unable to find a job in other banana enterprises, since the companies exchange information on membership and keep a list of all unionized workers (the example is given of union member Mr Samuel Contreras Carrión, who was dismissed from the Cobal enterprise, tried to find a job on other plantations and was told that he had been blacklisted). The Committee notes that the Government has forwarded the information sent by the Chiquita Brands – Cobal Division enterprise, stating that: (a) it does not keep blacklists of any kind, given that this is an illegal practice according to the internal legislation under the Regional Agreement, as well as the company Code of Conduct; and (b) in the case of Mr Samuel Contreras Carrión, as may be seen from the record drawn up in the Ministry of Labour, there have been no assertions by any representative of another company expressly stating that the worker in question could not obtain a job in the area because of an instruction or direct recommendation from the Cobal enterprise. In these circumstances, the Committee requests the Government to take the necessary steps to ensure that an independent inquiry is carried out in the banana sector concerning the allegations that blacklists are being kept, and to keep it informed in this regard.*

509. *Lastly, the Committee notes with concern that although the Government has sent detailed observations on legislative initiatives in regard to the slowness and ineffectiveness of administrative and judicial procedures, as to the allegations of anti-union discrimination in several enterprises it has merely forwarded information provided by the enterprises. In these circumstances, the Committee expects that the Government will conduct the necessary inquiries and communicate the relevant observations as requested.*

The Committee's recommendations

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

(a) Recalling that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has, for several years, referred to the slowness and ineffectiveness of administrative and judicial procedures in

cases of anti-union practices, the Committee, like the CEACR, urges that the various bills currently in progress in relation to the issues on which the Government provides information, will be adopted in the very near future and that they will be in full conformity with the principles of freedom of association.

(b) In regard to alleged discrimination in favour of the permanent workers' committees to the detriment of the trade unions, the Committee requests the Government to send its observations without delay.

(c) In regard to the Chiquita Cobal enterprise, the Committee requests the Government to inform it: (1) whether trade union officials Mr Teodoro Martínez Martínez, Mr Amado Díaz Guevara, member of the Committee on the Implementation of the Regional Agreement between the IUF/COLSIBA and Chiquita, Mr Juan Francisco Reyes and Mr Ricardo Peck Montiel have initiated judicial proceedings concerning their dismissals and, if so, of the status of these proceedings; (2) of the grounds for the dismissal of Mr Reinaldo López González and the reasons why the court ruling ordering his reinstatement was not executed, and to send it a copy of the agreement that is to be signed by the enterprise and the worker; and (3) of the grounds for the dismissal of Mr Manuel Murillo de la Rosa and the status of the court proceedings concerning his dismissal.

(d) In regard to the Chiquita – Chiriquí Land Company, the Committee requests the Government to inform it whether, in the process of the negotiations which the company says it has conducted with the trade union, it was decided to reinstate the dismissed trade unionists and members and, if not, to inform it of the grounds for the dismissals and whether judicial proceedings have been initiated in this regard.

(e) In regard to the Desarrollo Agroindustrial de Frutales SA enterprise, the Committee: (1) urges the Government to take all steps at its disposal so as to promote collective bargaining between the employers and their organizations on the one hand, and the organizations of workers on the other, in order to regulate the conditions of work in the enterprises concerned; and (2) requests the Government to send its observations concerning the alleged anti-union dismissal of Mr Jorge Luis Rojas Naranjo and to indicate whether the conciliation referred to in the case of Mr Germán Enoc Méndez' dismissal involved his reinstatement.

(f) In regard to the Santa María del Monte SA agricultural enterprise, the Committee requests the Government: (1) to send its observations concerning the allegations that workers of the enterprise were detained by the migration police; and (2) to inform it of the total number of workers dismissed at the same time as the trade unionists referred to by the complainant organizations, broken down into unionized and non-unionized workers, to keep it informed of the judicial proceedings under way referred to in the information sent by the enterprise, and to inform it if there were any trade union members among the workers rehired by the enterprise.

(g) In regard to the allegations concerning the Cariari and Teresa plantations owned by Banacol, the Committee requests the Government to send its observations without delay.

(h) The Committee requests the Government to take the necessary steps to ensure that an independent inquiry is carried out in the banana sector concerning the allegations that blacklists are being kept, and to keep it informed in this regard.

CASE NO. 2542

DEFINITIVE REPORT

Complaint against the Government of Costa Rica presented by — the National Union of Social Security Fund Employees (UNDECA) supported by — the World Federation of Trade Unions (WFTU) (Regional Office in the Americas)

Allegations: Restrictions of freedom of expression and of the right to information of a trade union organization

511. The complaint is contained in a communication from the National Union of Social Security Fund Employees (UNDECA) dated 19 January 2007, and was supported by the World Federation of Trade Unions (WFTU) (Regional Office in the Americas) in a communication dated 31 January 2007.

512. The Government sent it observations in a communication dated 23 April 2007.

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

A. The complainants' allegations

514. In its communication dated 19 January 2007, UNDECA alleges that the Government of Costa Rica, in August 2004, together with the other countries of Central America, negotiated a Free Trade Agreement with the United States. The negotiations were controversial because they were subject to a "confidentiality clause" which kept Costa Rican citizens in ignorance of the progress of talks until the publication of the final text as negotiated and signed by governments. Unfortunately, the other Central American countries have already approved this Agreement, although the Costa Rican Legislative Assembly is still discussing it and will in the coming months have to decide whether or not to give its final approval.

515. UNDECA adds that the private sector and the Government have allocated considerable resources to financing a media campaign to promote the Agreement. By contrast, social welfare organizations, with their limited resources, have undertaken a number of activities in universities, communities and public institutions to inform citizens and workers of the

very damaging content and scope of the Agreement, which would lead to the destruction of the social welfare state and the rule of law and of the social safeguards won by working people. The Free Trade Agreement is very widely opposed by social welfare organizations, cooperatives, trade unions, local community organizations, universities and the like.

516. UNDECA states that it has taken on an important role in this civil struggle and warns of the possible impact of the Agreement on public health policy, the supply of pharmaceutical drugs, social security and, in particular, the jobs of people employed by the Costa Rica Social Security Fund (CCSS). The management of the Fund, headed by its executive president (a government official), have disregarded the principles of social security in Costa Rica and defended the Free Trade Agreement tooth and nail, claiming that it would have absolutely no detrimental effects on the Fund, a viewpoint largely invalidated even by the World Health Organization. However, the government authorities and this public institution have not merely directed a considerable proportion of the Fund's budget to promoting the new Free Trade Agreement; they have in addition sought to monitor and restrict the activities of the trade unions that oppose this deplorable Agreement and are endeavouring to provide workers with objective information.

517. UNDECA in this connection draws attention to the fact that, following instructions from the Government, the executive board of the CCSS, in article 16 of the record of its sitting No. 8101 which took place on 26 October 2006, adopted the following agreement:

> Article 16
>
> In response to concerns that CCSS facilities are being used for propaganda for or against the Free Trade Agreement, it is agreed that the Medical and Administrative Division should be asked to review the situation at various CCSS facilities and issue a minute to the effect that the facilities in question should not be used for those purposes.

518. According to UNDECA, the only publicity in favour of the new Free Trade Agreement has been the official propaganda which is not subject to any restriction; the above agreement is thus directed at propaganda, mainly from the trade unions, against the Agreement, and this seriously infringes the right of the trade unions to express their views freely, something that is especially important when dealing with an issue that has such major implications nationally and especially for the CCSS and the jobs of its employees. UNDECA attaches a copy of Circular No. 43941 issued by the Fund management on 8 November 2006 (reproduced in the conclusions below) in accordance with article 16 of the record of sitting No. 8101. This, in the view of UNDECA, violates the freedom of association Conventions ratified by Costa Rica and the principles of the ILO's supervisory bodies. The agreement adopted by the executive board of the CCSS violates freedom of association because it prevents trade union organizations – which are hardly likely to favour the Free Trade Agreement – from using CCSS facilities to make known their own position regarding the Agreement. For the first time, trade unions are being prevented from making use of institutional facilities to inform workers of the scope and implications of the Agreement and from publicizing action to defend the most sacrosanct interests of the country and of the CCSS.

519. In its communication of 31 January 2007, the WFTU (Regional Office in the Americas) associated itself with the complaint made by UNDECA and put forward the same arguments.

B. The Government's reply

520. In its communication of 23 April 2007, the Government stated that the complaint is replete with subjective assertions and, *strictly speaking*, does not come within the remit of an

international body charged, as the ILO is, with monitoring the application of international labour standards.

521. In this context, with regard to the matter of the Free Trade Agreement with the United States, the statements made by the complainant organization are just opinions that do not warrant any particular rebuttal and indicative of the freedom of thought and expression that prevails in Costa Rica. In any case, the Free Trade Agreement in question is a legal instrument pertaining to international terms of trade which prevail in the country following its negotiation by a team of duly authorized negotiators. The text of the Agreement itself is currently being examined and discussed by the legislature to which all interested sectors, including the trade unions, have made their respective positions clear.

522. As regards more specifically the alleged measures taken by the CCSS management to restrict trade union action against the Agreement, the Government provides a copy of the following observations made by the head of the Administrative Division of the CCSS:

> The issues raised by the trade union organization are due to an erroneous understanding of the aims and content of Circular No. 43941 of 8 November 2006. In this regard, the executive board of the CCSS adopted article 16 of the record of its sitting No. 8101 which contains the following agreement:
>
> > Article 16
> >
> > In response to concerns that CCSS facilities are being used for propaganda for or against the Free Trade Agreement, it is agreed that the Medical and Administrative Division should be asked to review the situation at various CCSS facilities and issue a minute to the effect that the facilities in question should not be used for those purposes.
>
> With the agreement of the executive body, Circular No. 43941 was issued on 8 November 2006. Both the agreement of the executive board and the circular sought to prevent a situation in which disputes over this issue might undermine the peace and stability which should prevail in the matter of health services. It should be noted that the text of Circular No. 43941 allows information and publicity measures in the areas (noticeboards) allocated to the trade unions for that purpose, which clearly shows that the measure in question was not intended to restrict freedom of expression.
>
> Since it was based on totally mistaken interpretations of measures taken by the CCSS, and in order to forestall further misunderstandings, the administration revoked Circular No. 43941 by issuing Circular No. 2021-07 of 3 January 2007. The executive board, also concerned at the misunderstanding of the agreement adopted in article 16 of the record of sitting No. 8101, revoked it with the adoption of article 28 of the record of sitting No. 8126.
>
> In the light of this, the allegations concerning restrictions of freedom of association within the CCSS are the result of misunderstandings of the action taken by the management of the institution, as is clear from the relevant documents.

523. The Government attaches a certified copy of the agreements set out in article 16 of the record of sitting No. 8101 and article 28 of the record of sitting No. 8126, as well as a certified copy of Circular No. 2021-07 of 3 January 2007.

524. According to the Government, article 28 of the record of sitting No. 8126 states that because of the misinterpretation of the reasons for the agreement set out in article 16 of sitting No. 8101, which was in no way intended to restrict the freedom of expression of CCSS staff in relation to subjects of national interest, the executive board agreed to annul these provisions in article 16 in order to prevent interpretations at variance with the spirit of the agreement. It reiterated (the Government attaches a copy of the corresponding agreement) that it has always adhered to a policy of absolute respect for freedom of expression in the terms in which it is enshrined in the Political Constitution and current legislation.

525. For these reasons, the Government calls for the dismissal of the complaint in its entirety; the alleged facts do not constitute a violation of trade union rights by the CCSS or by the Government, since the measures adopted by the authorities were in line with legislation in force and in keeping with the principles of the ILO.

C. The Committee's conclusions

526. *The Committee observes that in the present complaint, the complainants allege restrictions of freedom of information and expression of employees of UNDECA as regards the harmful impact of the Free Trade Agreement negotiated between the United States and Costa Rica (currently being discussed by the Legislative Assembly) on the advances won by working people, and in particular in the area of public health policy, supply of pharmaceutical drugs, social security and the jobs of CCSS employees. More specifically, the complainants criticize article 16 of the record of sitting No. 8101 of the executive board on 26 October 2006, according to which:*

> *Article 16*
>
> *In response to concerns that CCSS facilities are being used for propaganda for or against the Free Trade Agreement, it is agreed that the Medical and Administrative Division should be asked to review the situation at various CCSS facilities and issue a minute to the effect that the facilities in question should not be used for those purposes.*

527. *The complainants also criticize Circular No. 43941 (copy supplied) signed by the manager of the Administrative Division and the manager of the Medical Division, dated 8 November 2006, which expands on article 16 of sitting No. 8101, as follows:*

> *Subject: Concern regarding use of CCSS facilities for the purpose of propaganda against or in favour of the Free Trade Agreement:*
>
> *In accordance with instructions issued by our executive board (article 16, record of sitting No. 8101), we have deemed it appropriate to refer to the concerns expressed with regard to the use of CCSS facilities for the purpose of propaganda against the Free Trade Agreement.*
>
> *This will be permitted only in specific trade union information areas (noticeboards) at different locations, and any such information must be reasonable and respectful in tone.*
>
> *In this regard, it is the responsibility of each centre to review the facilities to ensure that they comply with this provision and to guarantee that they are not used for offensive propaganda.*

528. *The Committee notes the Government's statements to the effect that: (1) the Free Trade Agreement is an instrument pertaining to international trade policy negotiated by a team of duly authorized negotiators; it is being discussed by the Legislative Assembly, where all sectors, including the trade unions, have been able to express their views on it; (2) the complaints made by the complainants are based on a misunderstanding of the aims and content of Circular No. 43941 of 8 November 2006 in implementation of article 16 of the record of sitting No. 8101 of the CCSS executive board; (3) attempts were made to prevent controversies over the Agreement from adversely affecting the peace and stability which should prevail in the health service sector; (4) the text of Circular No. 43941 permits displays of information in publicity and information areas (noticeboards) allocated to the trade unions and the measure was thus not intended to restrict freedom of expression; (5) given that it was the result of misunderstandings of the actions taken by the CCSS, and in order to put an end to such misunderstandings, the administration cancelled Circular No. 43941 on 3 January 2007 and the executive board revoked article 16 of the record of sitting No. 8101.*

529. *The Committee notes that the authorities of the CCSS in early January 2007 revoked the decisions and circulars dated 26 October and 8 November 2006. The Committee notes with regret that, during a period of just over two months, these documents limited the right of information and expression with regard to the Free Trade Agreement in CCSS facilities inasmuch as they allowed only displays of information on designated trade union noticeboards and excluded the use of other media such as those envisaged in the Workers' Representatives Recommendation (No. 143) (distribution of pamphlets, publications and other documents), or those that might be freely discussed and negotiated with the CCSS management (meetings, symposia, round tables, and so on).*

530. *The Committee has repeatedly emphasized the importance of the principle that the freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the Government's economic and social policy [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 157], and the principle that the full exercise of trade union rights calls for a free flow of information, opinions and ideas and, to this end, workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other activities. Nevertheless, in expressing their opinions, trade union organizations should respect the limits of propriety and refrain from the use of insulting language [****Digest****, op. cit., para. 154].*

531. *The Committee expects that these principles will be fully respected in future by the Costa Rica Social Security Fund. Noting, as has already been indicated, that the management of the CCSS within a period of two months corrected certain measures previously adopted and revoked the restrictions on rights of information and expression of the trade unions, the Committee will not pursue its examination of this case.*

The Committee's recommendation

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

CASE NO. 2450

INTERIM REPORT

Complaint against the Government of Djibouti presented by
— the Djibouti Union of Workers (UDT)
— the General Union of Djibouti Workers (UGTD) and
— the International Confederation of Free Trade Unions (ICFTU)

Allegations: The complainant organizations allege that the Government refuses to take the necessary measures to reinstate union members dismissed in 1995 following a strike in protest against the consequences of a structural adjustment programme launched by the IMF, despite having made a commitment to reinstate them in 2002; continues to dismiss union officials unfairly and to harass them; has

adopted a new Labour Code spelling the end of free and independent trade unionism; and shows favouritism in the appointment of workers' delegates to regional and international conferences. They also allege the violent suppression of a strike and the barring from entry of an international trade union solidarity mission

533. The Committee last examined this case during its May–June 2006 session [see 342nd Report, paras 412–436]. The Djibouti Union of Workers (UDT) sent additional information in a communication dated 17 June 2006, and new allegations in a communication dated 3 October 2006.

534. The Government sent its observations in a communication dated 27 March 2007.

535. 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

536. In its previous examination of the case, the Committee made the following recommendations [see 342nd Report, para. 436]:

(a) With regard to the alleged refusal to reinstate the workers dismissed following a strike, the Committee requests the Government to keep it informed of the situation regarding the trade union officials to be reinstated under the terms of the agreement of 8 July 2002: Abdoulfatah Hassan Ibrahim; Hachim Adawe Ladieh; Houssein Dirieh Gouled; Moussa Wais Ibrahim; Abdillahi Aden Ali; Habib Ahmed Doualeh and Bouha Daoud Ahmed. The Committee requests the Government to ensure that all those workers who so wish are reinstated, without loss of wages or benefits, and that those not wishing to be reinstated receive adequate compensation.

(b) With regard to the allegations of harassment and unfair dismissal of trade union officials, the Committee requests the Government promptly to launch an independent inquiry into the allegations of harassment and dismissal of trade union officials, as well as into the alleged pressure on their friends and families and, should evidence be found of such acts having been committed, immediately to take the necessary measures to put an end to such acts of discrimination and harassment and to punish those responsible.

(c) With regard to the allegation concerning the adoption of a new "antisocial" labour code which violates both international Conventions and the national Constitution, the Committee requests the Government to provide a copy of the text in question.

(d) Deploring the information concerning the arrest of an ILO official, the Committee considers this to be a serious and urgent case and urges the Government to reply without delay to the serious allegations raised in the latest communication of the ICFTU referring to government intervention in strike action and trade union elections, arrests and detention of trade union leaders and members, the barring from entry of an international trade union solidarity mission and the subsequent arrest and interrogation of the unique member of this mission who was allowed to enter the country, an ILO official, so that it may be in a position to examine this case in full knowledge of the facts.

(e) The Committee requests the Government to accept a direct contacts mission.

B. New allegations

537. In its communication of 17 June 2006, the UDT states its view that the Labour Code, promulgated by Act No. 133/AN/05/5th L of 28 January 2006, is a retrograde step in relation to the previous Code and violates Conventions Nos 87 and 98 by imposing restrictions on the exercise of trade union rights. Moreover, the Government's claim that the Code was drafted with the collaboration and approval of the International Labour Office (ILO) is incorrect; the ILO and the country's social partners were not involved in the adoption of the Code.

538. Certain provisions of the Labour Code are likely to put free and independent trade unionism at risk. Sections 41 to 43 on the suspension of employment contracts during periods of trade union office could result in the holding of trade union office being considered a form of serious misconduct which would allow the employer to claim substantial modification of the terms of the contract and dismiss the worker concerned.

539. Moreover, according to section 214, a person sentenced by any court is barred from holding any trade union office. In the context of Djibouti, where a person can be arrested, detained and sentenced on spurious pretexts, this provision of the Labour Code constitutes a threat to the exercise of freedom of association and the right to bargain collectively. In support of this claim, the complainant cites two examples of arrests and sentences which are considered arbitrary.

540. The complainant also criticizes section 215 of the Labour Code, which relates to procedures for verifying the legality of a trade union. This provision contains measures which run counter to the principle of freedom of association; it provides, for instance, that a trade union is legalized when the Minister of Labour issues a certificate on the recommendation of the labour inspector; that the government procurator has the right to dissolve a trade union; and that the process for establishing a trade union must be repeated even when there is a minimal change within the trade union's administration.

541. All these provisions infringe not only ILO Conventions Nos 87, 98, 135 and 158, but also national texts such as the Constitution and regional and international agreements.

542. In its communication dated 3 October 2006, the UDT refers once again to the situation involving Mr Hassan Cher Hared, secretary for international relations of the UDT. The UDT recalls that Mr Hassan Cher Hared was subjected to various forms of discrimination and harassment, and refers to his dismissal in September 2006 when he was participating in trade union training activities at the ILO International Training Centre in Turin. According to the UDT, the fact that Mr Hassan Cher Hared was dismissed, even though his request for leave to participate in the trade union training seminar had been approved, shows how sections 41 to 43 of the Labour Code can be used to punish trade union activity as a form of serious misconduct, through dismissal.

C. The Government's reply

543. In a communication dated 27 March 2007, the Government sent its observations concerning certain points raised in the recommendations made by the Committee during its previous examination of the case.

544. With regard to the adoption of the Labour Code, the Government states once again that the social partners were fully consulted at each stage of the process. According to the Government, the work, which lasted almost ten years, began at the end of 1996 and ended in January 2006 with the promulgation by the President of the Republic of the Act issuing the Labour Code. The Government states that consultations with the social partners took

place during the preparatory phase between 1996 and 1997, and again in September 1999 when the first "state" version was presented to the social partners. A new version proposed by the Employers' Association was received by the Government in January 2000. During the second phase established by the Government, an ad hoc review committee was set up in November 2001 to prepare a version of the Code which would take into account the social partners' observations. The social partners met between February and March 2002 to discuss the version drafted by the ad hoc committee. However, although comments were received from the Employers' Association, the trade union confederations (UDT and UGTD) did not provide any comments, on the grounds that they did not have the necessary technical expertise. In May 2002, the Ministry offered the trade unions the assistance of Mr Mohamed Ali Foulie. However, according to the Government, Mr Foulie withdrew his assistance when the trade unions failed to give their full cooperation. Following a government reminder to the trade unions in July 2002, comments on the Code were received from the Arab Labour Organization (ALO) on behalf of the UGTD. The ILO submitted its comments on the Code in November 2002 following a request by the trade unions. The Government states that all these elements are proof of its commitment to the principle of collective bargaining which has been fully applied in the context of the adoption of the Labour Code.

545. With regard to the content of the Labour Code which, according to the complainants, restricts workers' right of association and does not allow collective bargaining in law or in practice, the Government states that one of the main principles enshrined in the new law is the principle that the State must not do everything but should instead allow the parties free rein to negotiate among themselves. In this respect, the Code recognizes the right of association and the importance of collective bargaining in sections 212, 214, 216, 258 and 259, to which the Government refers in detail.

546. Finally, with regard to the reinstatement of the workers dismissed in 1995, the Government states that this is no longer relevant, since the workers concerned have either been reinstated, have refused to be reinstated, or no longer live in Djibouti. In support of its statement, the Government cites the example of Mr Aden Mohamed Abdou and Mr Kamil Diraneh Hared, who both refused the offers made to them. As for Mr Hassan Cher Hared, the Government states that he was reinstated in August 2005.

D. The Committee's conclusions

547. *The Committee takes note of the new allegations presented by the UDT. It recalls that the present complaint concerns: (1) the Government's refusal to take the necessary measures to reinstate union members dismissed in 1995 following a strike in protest against the consequences of a structural adjustment programme launched by the IMF, despite having made a commitment to reinstate them in 2002; (2) the repeated harassment of trade unionists, the arrests and dismissals of trade union officials, and the lack of response by the courts to the trade unionists' complaints; (3) the adoption of a new Labour Code that will result in the disappearance of free and independent trade unionism; (4) the barring from entry of an international trade union solidarity mission, despite assurances given by the Minister of the Interior that he would allow the mission to enter Djibouti without hindrance; and the arrest and subsequent interrogation of the only member of the mission who was allowed to enter the country (an ILO official).*

Factual aspects of the case

548. *With regard to the allegations concerning the refusal to reinstate workers dismissed following a strike, the Committee had noted that under the terms of the agreement concluded on 8 July 2002 between the Directorate for Labour and Relations with the*

Social Partners and the trade union officials, the Government had undertaken to reinstate the dismissed trade unionists. The Committee had requested the Government to ensure that all those workers who so wished were reinstated, without loss of wages or benefits, and that those not wishing to be reinstated received adequate compensation, and had also requested the Government to provide further information on the situation concerning seven of these individuals, namely: Abdoulfatah Hassan Ibrahim; Hachim Adawe Ladieh; Houssein Dirieh Gouled; Moussa Wais Ibrahim; Abdillahi Aden Ali; Habib Ahmed Doualeh; and Bouha Daoud Ahmed. In this regard, noting the information provided by the Government on the situation of Aden Mohamed Abdou and Kamil Diraneh Hared, who are alleged to have refused offers of reinstatement, the Committee notes with regret that the Government has not replied to this request, and urges it to do so.

549. *As regards the points raised in subparagraph (b) of the above recommendations, the Committee notes with regret that the Government has not replied to the allegations of harassment and unfair dismissals of trade union officials. The Committee urges the Government promptly to launch an independent inquiry into the allegations of harassment and dismissals of trade union officials and the pressure to which their friends and families have been subjected, and, if those allegations are found to be true, to take immediate steps to put a stop to such acts of discrimination and harassment and punish those responsible.*

550. *As regards the allegations made by the UDT on the situation of Mr Hassan Cher Hared, the Committee is concerned by information that he was dismissed in September 2006 while participating in a trade union training course at the ILO's International Training Centre in Turin. The Committee notes that, according to the UDT, the application for leave made by Mr Hassan Cher Hared for the purpose of taking part in the course had in fact been accepted. While noting the Government's information that Mr Hassan Cher Hared had been reinstated in August 2005, the Committee notes with regret that the Government does not reply to allegations that he was again dismissed in September 2006. The Committee deeply regrets this new dismissal of Mr Hassan Cher Hared, which took place when he was abroad, and urges the Government to launch an inquiry without delay into this latest dismissal and, if it is found that the dismissal was based on anti-union grounds, to reinstate Mr Hassan Cher Hared and pay any arrears of wages owed to him, and to keep the Committee informed on this matter.*

551. *The Committee notes with deep regret that the Government has not replied to subparagraph (d) of the above recommendations concerning the Government's intervention in strikes and trade union elections, arrests and detentions of trade union leaders and members, the barring from entry of an international trade union solidarity mission, and the subsequent arrest and interrogation of the only member of this mission who was allowed to enter the country (an ILO official). The Committee calls on the Government to provide its observations as soon as possible, so that it may be in a position to examine this case in full knowledge of the facts.*

Legal aspects of the case

552. *With regard to the adoption in January 2006 of the new Labour Code, which the complainant organizations claim is "antisocial" and violates both international Conventions and the country's Constitution, the Committee has received a copy of the text in question. The Committee takes note of the UDT's allegations concerning sections 41, 42, 43, 214 and 215 of the Code, and has also taken note of the Government's observations.*

553. *As regards sections 41 and 42 of the Labour Code concerning the suspension of employment contracts, the Committee notes that according to section 41, the employment contract is suspended for the duration of any term of political or trade union office held by*

the worker which is not compatible with paid employment (paragraph 8). Section 42 provides in addition that the period during which the employment contract is suspended is not counted for the purpose of determining the worker's seniority within the undertaking. In this regard, the Committee considers that the holding of trade union office is not incompatible with paid employment, and consequently any worker holding trade union office should be able to remain employed. The Committee recalls that Paragraph 10, subparagraph 1, of the Workers' Representatives Recommendation, 1971 (No. 143), provides that workers' representatives in the undertaking should be afforded the necessary time off from work without loss of pay or social or fringe benefits, for carrying out their representation functions [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 1110].*

554. *The Committee considers that sections 41 and 42 of the Labour Code, in providing for a more or less automatic suspension of the employment contract when a worker holds trade union office, are likely to be detrimental to the rights of all workers to establish and join a trade union of their own choosing and to carry on their trade union functions. The Committee considers that it would be more appropriate to leave the question of the continuation of duties during a period of trade union office to negotiation between the parties concerned. The Committee therefore requests the Government to modify the Labour Code with provisions to the effect that the possibility of suspending a worker's employment contract during a period of trade union office, in cases where holding such office is incompatible with the demands of work, is a matter for negotiation between the parties concerned, who must establish the relevant practical aspects of this, and in any event cannot be automatic. The Committee requests the Government to keep it informed in this regard.*

555. *With regard to section 214 of the Labour Code, according to which a person sentenced by any court may not hold union office, the Committee recalls that a law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of freedom of association, when the activity condemned is not prejudicial to the aptitude and integrity required to exercise trade union office [see* ***Digest****, op. cit., para 421]. In this case, the Committee considers that section 214 of the Labour Code, in deeming any person who has been convicted to be unsuitable for trade union office, is formulated too broadly and would cover situations in which the nature of the conviction is not inherently such as to rule out the holding of trade union office. The Committee requests the Government to modify section 214 of the Labour Code in consultation with the social partners so as to ensure that only court sentences for offences which by their very nature are prejudicial to the integrity of the individual are deemed to be incompatible with the holding of trade union office.*

556. *As regards section 215 of the Labour Code concerning the formalities for registration and verification of a trade union's legality, the Committee notes, first, that the founders of any trade union are required to deposit their by-laws and the list of persons charged with the administration and management of the union. Within a period of 30 days following deposition, copies of the by-laws and the list of union officials are transmitted by the labour inspector to the Labour Minister and to the government procurator. These documents are accompanied by a report produced by the labour inspector on the circumstances and conditions in which the union has been established, the date and place of the constituent meeting, and the occupational backgrounds of the members. The Labour Minister then has 15 days to grant legal recognition to the union. The government procurator then has 30 days to verify that the union's by-laws are in order and to review the situation of each of the union officials, and to inform the Minister of the Interior, Minister of Labour and the union officials concerned, of his conclusions. Lastly, any modification to the by-laws and any changes to the union officers have to be reported to these same authorities and is subject to verification under the same conditions.*

557. *The Committee recalls that Article 2 of Convention No. 87 guarantees the right of workers and employers to establish and join organizations of their own choosing "without previous authorization". National legislation which requires the deposition of organizations' by-laws is compatible with this provision of the Convention if it is a mere formality intended to ensure that the by-laws are available to the public. Nevertheless, problems of compatibility with Convention No. 87 may arise if the registration procedure is lengthy or complicated, or if the rules concerning registration are applied in such a way as to defeat its purpose and the registration authorities make excessive use of discretionary powers, given that unclear texts can favour such interpretations. In the case under consideration, section 215 of the Labour Code, according to which a favourable decision of the Labour Minister requires not only the deposition by the trade union's founders of the relevant documents but also a detailed report by the labour inspector, would appear to grant more or less discretionary power to the authorities in deciding whether or not an organization meets the registration criteria. The situation thus created would be similar to the situation in which previous authorization is required. Such a situation is likely to be a serious obstacle to the establishment of organizations and may in practice be tantamount to denying the right of workers and employers to establish organizations without previous authorization, in contravention of Article 2 of Convention No. 87. Consequently, the Committee requests the Government, in consultation with the social partners, to modify section 215 of the Labour Code so as to guarantee the right to establish workers' and employers' organizations without previous authorization, remove the provisions which de facto give discretionary powers to the authorities, and ensure that the registration procedure is just a formality.*

558. *The Committee wishes to recall that there should be a right of appeal to the courts against any administrative decision regarding the registration of a trade union organization. The Committee requests the Government to indicate the appeal procedure available in cases where the Labour Minister refuses to issue a registration certificate, or in cases where the government procurator requests closure of a union under section 215 of the Labour Code. If no appeal procedure is available under national laws and regulations, the Committee invites the Government to establish one.*

ILO technical assistance

559. *The Committee has taken note of the discussions that took place within the Committee on the Application of Standards at the 96th Session of the International Labour Conference on the application by Djibouti of Convention No. 87. The Committee notes that the Government has accepted a direct contacts mission in order to clarify the situation as regards all of the issues raised [see ILC, 96th Session,* ***Provisional Record*** *No. 22, Part II, p. 30]. In that regard, the Committee hopes that it will be possible to discuss all the issues raised in the present case during the direct contacts mission, given the discrepancies between the information contained in the communications of the complainant organizations and that of the Government. The Committee requests the Government to keep it informed of any new development concerning the holding of an on-the-spot direct contacts mission and the measures taken to give effect to its recommendations.*

The Committee's recommendations

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

(a) As regards the alleged refusal to reinstate the workers dismissed following a strike, the Committee requests the Government to keep it informed of the situation of the trade unionists who were to have been reinstated under the

terms of the agreement of 8 July 2002, namely: Abdoulfatah Hassan Ibrahim; Hachim Adawe Ladieh; Houssein Dirieh Gouled; Moussa Wais Ibrahim; Abdillahi Aden Ali; Habib Ahmed Doualeh; and Bouha Daoud Ahmed. The Committee requests the Government to ensure that all workers who wish to be reinstated can be reinstated, without loss of wages or benefits, and that those who do not wish to be reinstated receive adequate compensation.

(b) As regards the allegations of harassment and unfair dismissals of trade union officials, the Committee requests the Government promptly to launch an independent inquiry into these allegations and into the alleged pressure put on their friends and families and, if they are found to be true, immediately to take the necessary measures to put an end to such acts of discrimination and harassment and punish those responsible. In view of the alleged dismissal of Mr Hassan Cher Hared in September 2006, the Committee considers that this is a serious case and urges the Government to launch an inquiry without delay into this recent dismissal and, if it is found that the dismissal was based on anti-union grounds, to reinstate Mr Hassan Cher Hared and pay him any wage arrears owed to him, and to keep it informed of this matter.

(c) As regards the intervention by the Government in strikes and trade union elections, arrests and detentions of trade union members and officials, the barring from entry of an international trade union solidarity mission, and the arrest and subsequent interrogation of the only member of the mission allowed to enter the country (an ILO official), the Committee urges the Government to reply promptly to the serious allegations made by the ICFTU.

(d) As regards the allegation regarding the adoption of a new "antisocial" Labour Code that violates both international Conventions and the country's own Constitution, the Committee requests the Government to modify sections 41, 42, 214 and 215 of the Labour Code and to keep it informed of any measure adopted to that end.

(e) The Committee requests the Government to keep it informed of any new developments in connection with the holding of an on-the-spot direct contacts mission, and the measures taken to give effect to its recommendations.

CASE NO. 2551

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

Complaint against the Government of El Salvador presented by the Latin American Central of Workers (CLAT)

Allegations: Arrest and trial of three informal sector trade union leaders

561. The complaint is presented in a communication from the Latin American Central of Workers (CLAT) dated 14 February 2007.

562. The Government sent its observations in communications dated 21 May, 11 June and 15 August 2007.

563. 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. The complainant's allegations

564. In its communication of 14 February 2007, the CLAT alleges that Mr José Vicente Ramírez, president of the National Association of Vendors, Small Traders and Similar Workers (ANTRAVEPECOS), is the first workers' leader in El Salvador's informal sector to have participated in various demonstrations in defence of workers from the municipality of Apopa and that, on 10 February 2007, the municipal authorities of Apopa launched an offensive and, by order of the courts, proceeded to evict the informal economy workers of this municipality from their work premises. Such events have been taking place since 1998.

565. CLAT adds that, in the light of the action taken by the municipal authorities, Mr José Vicente Ramírez immediately began to organize a protest against the eviction measure which at the time was being imposed on the premises where he carried out his economic activity. Several days later, on 16 February 2007, the court issued a warrant for the provisional arrest of trade union leader Mr José Vicente Ramírez on the grounds of alleged acts of terrorism; he was detained on the same day. Once in custody, Mr José Vicente Ramírez and two other officials – Ms Suyapa Martínez and Mr Luís Alonso Cantarero – were charged under the Special Anti-Terrorism Act on the grounds that the mobilization of the informal economy workers constituted a terrorist act.

566. CLAT states that this arbitrary accusation could lead to a prison sentence of 40–60 years. The charges brought by the magistrate against the officials do not correspond to the truth, since it is not a terrorist act to express openly and publicly one's objection to being evicted with no counterproposal to safeguard the livelihoods of all the workers and their families; this situation constitutes a clear violation of fundamental rights and once again illustrates the absence of freedom of association in El Salvador. The defence of the right to work, as promoted by the ILO in the World Employment Programme, is a natural exercise of human rights, and mobilization/protest forms part of this exercise, which is why CLAT categorically rejects the terms of the unfounded accusation. CLAT is keen to emphasize that the administrative and judicial procedures used, such as the use of an anti-terrorism act to penalize the participants of a trade union demonstration, are unacceptable in any

circumstances and highlight the anti-trade union policy, inconsistent with ILO Convention No. 87, which is practised by the municipal and national authorities of El Salvador.

567. CLAT demands the immediate release of the three trade unionists, the dismissal of the charges against them, and full compliance with both Convention No. 87, which states that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention", and Convention No. 98, under which "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to: (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours".

B. The Government's reply

568. In its communication dated 21 May 2007, the Government stated that the complainant's allegations are true in the sense that Mr José Vicente Ramírez, president of the ANTRAVEPECOS, was indeed arrested; what is not true is that he was arrested as he accompanied a demonstration against the eviction of the trade union's members from their work premises, since he was arrested six days after the street protest had taken place – a protest which resulted in damage to the town hall of Apopa and personal injury to its employees. Mr José Vicente Ramírez was in fact arrested within the context of the reorganization of the various vendors and small traders of the municipal market and areas close to the town of Apopa.

569. For the purposes of this reorganization, the town hall of Apopa, together with trade union representatives from the ANTRAVEPECOS, held a number of meetings with a view to regulating the use of parks, streets, pavements and other municipal areas in order to ensure free movement in such areas. Both parties had agreed to set up a forum for negotiation and dialogue so as to facilitate mutually satisfactory agreements and had undertaken not to provoke or resort to violence or to have recourse to other authorities outside the town of Apopa.

570. Despite the foregoing, according to the Government, the vendors on 10 February 2007 expressed their disapproval of the reorganization by carrying out a protest march in which they proceeded to shout profanities, throw stones and bricks at municipal buildings, set fire to a vehicle belonging to Apopa town hall and damage other vehicles in the area of the protest. Moreover, a number of town hall employees were injured during these acts of vandalism. In view of this disturbance, the Office of the Attorney-General of the Republic, at the request of the town hall of Apopa, launched an investigation in order to determine and assign responsibility for the injuries and damage caused. The Attorney-General subsequently established, on the basis of eyewitness accounts and photographs, that Mr José Vicente Ramírez was present at the scene of the offence, carrying out and directing the protest, and throwing blunt objects and inciting others to follow suit with the intention of causing damage to property in the town of Apopa.

571. The Government adds that, according to the Attorney-General's investigations, eyewitnesses to the protest maintain that Mr José Vicente Ramírez gave Mr Luís Alonso Cantarero Castro a container of flammable liquid (petrol) which they used to set fire to a vehicle belonging to the town hall.

572. In the light of such evidence, the Attorney-General presented the magistrate of Apopa with a request for the provisional arrest of Mr José Vicente Ramírez, on the grounds that he had committed offences classed as terrorist acts using weapons, explosive devices or substances, chemical, biological or radiological agents, weapons of mass destruction, or

similar objects, as defined and punishable under section 15 of the Special Anti-Terrorism Act, and that there had been special aggravating circumstances, as set forth in section 34, paragraphs (a), (c), (g), (h) and (j) of the same Act, which are to the detriment of public order. This offence is based on the fact that protected legal rights such as integrity of the person, freedom, property and public order, and so on, which are enshrined in articles 1 and 2 of the Constitution, have been endangered in such a way as to fulfil the procedural requirements of section 292 of the Code of Penal Procedure which establishes the prerequisite of *fumus bonis iuris* (the existence of a plausible right to these measures).

573. Although provisional detention is not the general rule, in this case the magistrate decided that an exception should be made, given the serious nature of the offence in question, which carries a penalty of up to three years' imprisonment, the fact that the offence also caused social unrest, and because no fixed address could be established for the accused, who has several places of residence; it was assumed that if he were released he would move around from one place to another and hide in the country's interior, which could hinder a specific part of the investigation and disrupt the judicial proceedings.

574. According to the Government, on 2 March 2007, the defence counsel of Mr José Vicente Ramírez made use of a legal measure that would make his release possible and asked the Court of First Instance of Apopa for a special hearing to review the measure of provisional detention that had been imposed for the offence in question. At this hearing, Mr José Vicente Ramírez requested to be released on bail, alleging that he had a fixed address, although in the court's view this could not be proved. At this hearing, the measure of preventive detention for Mr José Vicente Ramírez was therefore confirmed.

575. A preliminary hearing had been scheduled for 18 April 2007, but was postponed when the Attorney-General's representative requested an extension of the deadline to allow further investigations. The hearing was rescheduled for 6 June 2007 at 10 a.m., pursuant to section 275 of the Penal Procedural Code.

576. As can be observed, Mr José Vicente Ramírez was arrested as a result of the damage caused in the town of Apopa and the street disturbances in which he participated directly, which are covered by national criminal legislation. The Government can therefore categorically state that the arrest of Mr José Vicente Ramírez is not related to labour issues, let alone to the violation of trade union rights. In the present case, Mr José Vicente Ramírez does not, strictly speaking, belong to or represent any trade union.

577. El Salvador is a democratic country which respects freedoms, but is also governed by a legal framework in which each person or official is subject to laws which must be respected. As a democratic country, El Salvador respects freedom of expression in accordance with article 29(2) of the Universal Declaration of Human Rights; article 19.3(a) and (b) of the International Covenant on Civil and Political Rights; and articles 13.1 and 13.2(a) and (b) of the American Convention on Human Rights.

578. On the basis of the foregoing, the Government believes that, since the alleged acts did not constitute a violation of trade union rights, the present complaint should be dismissed.

579. In its communication of 11 June 2007, the Government states that the preliminary hearing of Mr José Vicente Ramírez, Mr Luís Alonso Cantarero and Ms Suyapa Martínez, who were being held for acts of terrorism, took place on 6 June 2007. At the end of the preliminary hearing, the Court of First Instance ruled that the acts leading to the arrest of Mr José Vicente Ramírez, Mr Luís Alonso Cantarero and Ms Suyapa Martínez could not be classed as acts of terrorism and that the Special Anti-Terrorism Act was therefore not applicable in this case, but that the defendants would continue to be tried for the ordinary offences of injury and serious damage under sections 143, 221 and 222 of the Penal Code.

The judge then ruled that Mr José Vicente Ramírez, Mr Luís Alonso Cantarero and Ms Suyapa Martínez should remain in custody for the duration of the sentencing (public) hearing. The Government states once again that the arrests are not related to labour issues, let alone to the violation of trade union rights.

580. In its communication of 15 August 2007, the Government states that pursuant to the hearing held before the fifth judge of San Salvador on 5 July 2007, Mr José Vicente Ramírez and Mr Luís Alonso Cantarero, who had been charged with the offences of causing aggravated personal injuries and serious damages under articles 143, 221 and 222 of the Penal Code, were released after having reached a settlement with the victims of the offences mentioned above. According to this settlement, those involved agreed to pay US$6,943.65, of which $3,000 was handed over to the legal representative of the authorities of the Municipality of Apopa during the hearing in the presence of the judge. On the basis of this information, it becomes clear that the detention of Mr José Vicente Ramírez, Mr Luís Alonso Cantarero and Ms Suyapa Martínez was not motivated by any labour issue, and did not aim at restricting their activities as trade union leaders.

C. The Committee's conclusions

581. *The Committee notes that, in the present complaint, the complainant alleges that Mr José Vicente Ramírez, Mr Luís Alonso Cantarero and Ms Suyapa Martínez, leaders of ANTRAVEPECOS, were arrested and tried for acts of terrorism, when, in reality, they were arrested and tried following their participation in a protest against the eviction of informal economy vendors and traders carried out by the authorities of the municipality of Apopa under the terms of a court order.*

582. *The Committee notes the Government's statements, according to which: (1) Mr José Vicente Ramírez was arrested not as he accompanied a demonstration against the eviction of the trade union's members from their work premises, but six days after the street protest which caused material damage to the town hall and personal injury to its employees; (2) Mr José Vicente Ramírez was arrested within the context of the reorganization of the various vendors and small traders of the municipal market and areas close to the town of Apopa, after it had been agreed that a forum for negotiation and dialogue would be established with ANTRAVEPECOS, with both parties undertaking not to resort to violence; (3) despite the foregoing, on 10 February 2007, the vendors, who disapproved of the reorganization, carried out a protest march during which they threw stones and bricks, and set fire to and damaged vehicles, which resulted in a number of town hall employees being injured; (4) the Attorney-General established that Mr José Vicente Ramírez had led the protests, throwing blunt objects and inciting others to follow suit; witnesses to the events say that he gave Mr Luís Alonso Cantarero a container of petrol which they then used to set fire to a vehicle; (5) at the request of the Attorney-General, the magistrate of Apopa ordered the provisional arrest of Mr José Vicente Ramírez, without provisional release, among other reasons because the fixed address of the accused could not be proved; (6) at the preliminary hearing (6 June 2007), the court ruled that Mr José Vicente Ramírez, Ms Suyapa Martínez and Mr Luís Alonso Cantarero had not committed acts of terrorism but would continue to be tried for ordinary offences of aggravated personal injury and serious damage, punishable under the Penal Code; it also ruled that they would remain in custody for the duration of the public hearing; (7) on 5 July 2007, pursuant to the hearing held before the judicial authority, both trade union leaders were released after having reached a settlement with the victims of the offences mentioned above and having agreed to pay them $6,943.65; (8) these arrests were not related to the exercise of labour or trade union rights, but to acts categorized as criminal offences. The Committee recalls that Article 8 of Convention No. 87 provides that in exercising the rights provided for in this Convention workers' and employers' and their respective organizations, like other persons or organized collectivities, shall respect the law of the land.*

583. *While observing that the statements made by the complainant and the Government over the alleged facts are contradictory, the Committee takes note of the settlement reached (in the framework of the court proceedings) between trade union leaders Mr José Vicente Ramírez and Mr Luís Alonso Cantarero, on the one hand, and the victims, on the other. Given that the latest communication of the Government does not contain any information on the situation of trade unionist Ms Suyapa Martínez (detained in the framework of the criminal proceedings), the Committee requests the Government to transmit the decision handed down on this trade union leader and expects that the judicial authority will issue a ruling in the very near future.*

The Committee's recommendation

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

The Committee requests the Government to transmit the decision handed down in respect of the trade union leader, Ms Suyapa Martínez, and expects that the judicial authority will issue a ruling in the very near future.

CASE NO. 2538

INTERIM REPORT

Complaint against the Government of Ecuador presented by the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL)

Allegations: The complainant organization alleges that the authorities of the Foundation for Science and Technology (FUNDACYT) requested that the ministerial agreement approving and granting legal personality to the FUNDACYT trade union be annulled and declared invalid; that the FUNDACYT authorities have not responded to its request to negotiate a collective agreement and that, in retaliation, ten workers were dismissed without compensation. It further alleges that the FUNDACYT authorities are urging the workers to give up their membership of the workers' organization

585. The complaint is contained in a communication from the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) dated 27 December 2006. The Government sent its observations in communications dated 16 February, 19 April and 7 May 2007.

586. Ecuador 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

587. In its communication dated 27 December 2006, the CEOSL states that Executive Decree No. 1603 was published in *Official Gazette* No. 413 on 5 April 1994, laying down the regulatory provisions for the reorganization of the National Science and Technology System (SNCT) by dissolving the National Council for Science and Technology (CONACYT), and creating a system with four levels: political, executive-operative, support and financial. Within this structure, the Ministry of Science and Technology (SENACYT), under the Office of the Vice-President of the Republic, became part of the political level as the executive political body of the SNCT. Meanwhile, under the provisions of the aforementioned Executive Decree, the Foundation for Science and Technology (FUNDACYT) became part of the executive-operative and financial levels of the system. FUNDACYT was set up as a non-profit-making organization with legal personality by various figures in the field of science and technology, and its statutes were organized and drafted in line with the Civil Code.

588. FUNDACYT, which is a private entity, obtains its economic resources primarily through its legal connection with the executive level. Since its creation, its founders envisaged that, in some cases, it would carry out certain activities indirectly because they were expressly prohibited by law and that, in others, it would allow them to exercise their abilities and capacities in an appropriate and timely manner within the framework of the SNCT, as established in Presidential Decree No. 1603. Article 4 of the aforementioned decree sets out the most relevant functions of FUNDACYT, which include: (a) planning, executing and monitoring the policies, strategies and medium- and long-term plans approved by the Ministry of Science and Technology; (b) proposing and setting the criteria for allocating resources to national programmes; (c) promoting and financing research projects, science and technology services and technological innovation; (d) promoting and financing the training of personnel to strive for excellence in science and technology; (e) promoting, financing and coordinating a national science and technology information system; (f) promoting and financing the necessary and relevant infrastructure and equipment for science and technology; (g) promoting and financing the management of technology in industry; (h) promoting and financing mechanisms to publicize, disseminate and popularize science and technology; (i) channelling the technical and financial cooperation negotiated by SENACYT; (j) administrating the financial resources provided by the Ministry of Science and Technology, or those obtained from multilateral credit bodies; and (k) collecting, generating, administrating and generally managing funds and/or its own resources and those that come from national or international, private or state sources, for scientific and technological purposes. Finally, it will be authorized to make and manage investments in national and international currencies. In short, FUNDACYT was set up as a private entity to carry out activities, and to take on the functions and duties assigned to it through the mandates, orders and instructions of SENACYT within the SNCT.

589. On 18 July 2006, in the city of Quito, the first meeting of the workers of FUNDACYT took place under the protection of the provisions of the Political Constitution of the Republic of Ecuador, which establish the State's obligation to guarantee and respect freedom of association. The exclusive goal of the meeting was to comply with sections 440, 447, 452 and the other relevant sections of the Labour Code by establishing a trade union. The principal motive for establishing the trade union was the atmosphere of instability, which was extremely worrying for the workers, and even now there is uncertainty about their future since the current Government, which is about to hand over power to the new President-elect, has decided to restructure the current SNCT, directly affecting the economic and financial operations of FUNDACYT and possibly even bringing about its dissolution – at present, this is practically a done deed.

590. Complying with the strict legal requirements for establishing this type of organization, the constituent meeting of the workers of FUNDACYT took place and at that meeting the interim Executive Board was democratically appointed and the union's draft statutes were discussed and approved. The Executive Board was instructed to proceed with the steps required by the competent state authority, in this case, the Ministry of Labour and Employment, to obtain, through the relevant administrative act, recognition of the trade union and the granting of legal personality in order to subsequently register this trade union, which was set up in accordance with the national laws in force. The time limit authorized by the law for the approval of statutes submitted to the Ministry is 30 days from the date of submission. The Labour Code establishes that approval of the statutes can only be withheld if they contain provisions contrary to the Constitution and/or the law. In other words, any refusal to register the organization could be based only on the reasons contained in the Labour Code (conflict between the statutory provisions and the Constitution or the law).

591. The complainant organization adds that, to the surprise of the interim Executive Board of the trade union, on 17 August 2006, it received communication No. 366-GL-2006 dated 8 August 2006 from the Ministry of Labour and Employment, notifying the CEOSL, nine days after the publication of the administrative act, that approval for the trade union of FUNDACYT had not been granted. To explain the refusal, the Ministry of Labour and Employment stated that the constituent act of the trade union had allegedly not been signed by two employees of FUNDACYT, Ms Sandra Catherine Argotty Pfeil and Ms Monserrat Ivonne Cadena Barsallo, who had expressly stated that, on 18 July 2006, they were not present at the meeting to establish the trade union and "renounced" their membership of the trade union.

592. To summarize, the Minister of Labour and Employment considered that the requirements of section 443 of the Labour Code had not been fulfilled, as the minimum number of 30 workers established by law were not present at the constituent meeting. Their letters of resignation from the union dated 8 August 2006, after the constituent meeting took place, confirm that Ms Argotty and Ms Cadena do not wish, for "personal reasons", to continue "belonging to the trade union". In this respect, there are three irregularities: first, a person's renunciation of their trade union membership cannot be interpreted to mean, as the Minister says, that they were not present at the constituent meeting; second, the Minister does not apply section 464 of the Labour Code, establishing that "the fact that the number of members in a trade union falls below that established in paragraph 1 of section 459 does not give cause to dissolve a trade union that has already been established" and, according to the constituent act of the union, the minimum number of workers required by law was complied with, as the two women were present and, as proof of their agreement and approval, they signed the document; and third, the Minister of Labour and Employment denied the exercise of the right to defence and rebuttal by revealing the renunciations before issuing his administrative act, which denied the right to organize. Therefore, in addition to the legally protected right to organize, which the Minister of Labour was bound to respect, he also violated the right to dignity of those who attended the constituent meeting, including the two women who renounced their membership. It would not be right to hold a new constituent meeting, as advised by the Labour Department of the Ministry, as that would imply accepting that the 28 members of the organization had acted dishonestly.

593. The CEOSL adds that the Ministry of Labour and Employment denied access to the file relating to this process, preventing anyone, and especially the members of the interim Executive Board of the trade union, from finding out the information available in the office of the Ministry, even though a request for access was made in writing to the Ministry's Legal Management Unit.

594. Although a specific mechanism exists in Ecuadorian law enabling an employer to request the dissolution of a trade union through legal proceedings presided over by a labour court judge and not through a simple administrative decision – made worse by the facts presented above, the workers of FUNDACYT decided to hold another constituent meeting of the trade union following the refusal to register the trade union. Accordingly, on 21 August 2006, the workers of FUNDACYT held a meeting with more participants than the minimum established by the law to prevent any trickery on the part of the authorities (even though this was not required by the labour laws) and a public notary attended to testify to the events. The Thirty-first Notary of the Canton of Quito was responsible for certifying the attendance of the constituent meeting and confirming that the required quorum was met. In their constituent meeting, the workers of FUNDACYT ratified their desire to establish a trade union, naming its interim Executive Board and initiating the steps required by law.

595. This time, within the time limit established by law, the Minister of Labour and Employment, through Ministerial Agreement No. 0427 of 18 September 2006, approved the statutes of the trade union of FUNDACYT without amendment and, pursuant to the process laid down in the Labour Code, ordered the registration of the union through communication No. MFN 0034 of 19 September 2006. On that date, legal personality was granted to the trade union. Using that legal personality, on 27 September 2006, the trade union of FUNDACYT presented a draft collective agreement to the labour inspector of Pichincha (the competent authority) so that, once their employer had been informed, the working conditions at the Foundation could be established. The Chairperson and Legal Representative of the Foundation was notified of the draft agreement on 3 October 2006, although so far there has been no reply to the request to negotiate a collective agreement and, indeed, anti-union measures have been taken, such as the summary mass dismissal which took place, as explained below.

596. The CEOSL states that on 18 October 2006, the constitutional President of the Republic of Ecuador issued Presidential Decree No. 1968 authorizing the Minister of Science and Technology to exercise and/or delegate, for as long as necessary, solely and exclusively, the legal representation of FUNDACYT, thereby putting an end to the lack of leadership suffered by the Foundation. Once the Minister of Science and Technology was appointed acting Chairperson and Legal Representative of FUNDACYT, on 19 October 2006, one day after Executive Decree No. 1968 was issued, he took his first action by ordering that ten workers should be denied access to the institution's premises, which was enforced by heavily armed private security guards.

597. Following this treatment, the ten workers were called to the meeting room of the FUNDACYT Chairperson, where he told them that a unilateral decision had been taken to terminate their employment, without citing any of the reasons for dismissal established in the law, for example in section 169 of the Labour Code. By so doing, he sought to remove the head of the trade union and abandon the collective bargaining process at the Foundation. Those who were dismissed had only demanded respect for their legitimate labour rights and had bravely denounced the irregularities that were taking place, not only on an industrial level, but in the field of science and technology on a national level.

598. Through legal sophistry, the Minister of Science and Technology, appointed by the President of the Republic, has so far been trying to avoid paying the dues and compensation owed to the dismissed workers of FUNDACYT, as well as the wages of those who still work for the institution who have been urged to renounce their acquired rights, including the right to join a trade union (wrongly hoping that this will provide a legal justification for dissolving the trade union) and they have been offered posts in the new institution that will be responsible for scientific and technological research, which has been planned by the executive.

599. The CEOSL alleges that on 29 November 2006, the Minister of Science and Technology, who is also the Legal Representative of FUNDACYT, filed an appeal for the review of Ministerial Agreement No. 00427 of 18 September 2006, approving the statutes and granting legal personality to the FUNDACYT trade union, with the Minister of Labour and Employment, in order to have the agreement annulled and declared invalid, arguing that "errors of form and substance were made in approving the union". According to the CEOSL, this administrative appeal, which even contains drafting errors, is inadmissible, as it goes against the first part of the third paragraph of section 440 of the Labour Code, according to which "workers' organizations can be suspended or dissolved only through oral proceedings as established in this Code", and the oral proceedings, according to the Labour Code, must be conducted before a labour court judge. However, the Minister of Labour gave notice that he considered the administrative appeal admissible on 29 November 2006 and initiated the proceedings, even though the text of this appeal does not state who is the opposing party. The aforementioned administrative authority has arranged for this appeal to be lodged against Ms Rocío Jaramillo Subía, a technologist and General Secretary of the trade union of FUNDACYT and, therefore, its Legal Representative, even though the document does not contain her name, position or address.

600. The CEOSL further alleges that the Minister for Science and Technology, Chairperson and Legal Representative of FUNDACYT, has urged those who still work at the Foundation not to become members of the trade union. The public authority is exerting pressure on and making demands of the workers to make them work at SENACYT, the public state institution which took over the functions and duties that had been conferred by law upon FUNDACYT.

B. The Government's reply

601. In its communication dated 16 February 2007, the Government states, with regard to the first refusal to register the trade union, that on page 42 of the file approving the statutes, there is an official document confirming that two workers from the institution declared before the Regional Labour Director of Quito that they had not known that the aim of the meeting was to establish a trade union and, therefore, their signatures did not reflect a wish to join the union or support its establishment. In this case, the actions of the Ministry of Labour were entirely valid, in accordance with section 448 of the Labour Code, the first paragraph of which establishes that "membership of any legally established association requires a written declaration stating that the individual wishes to join that association". It was therefore not possible to make the establishment of the trade union legitimate and legal given the declarations of the two workers who intervened to express the aforementioned facts, which are the exclusive responsibility of those individuals and not of the Ministry of Labour, which followed the law in this case, as has been shown. Once the legal requirements had been fulfilled, approval was granted and the union was registered. In short, the Ministry of Labour and Employment cannot be held responsible for an administrative act resulting from the actions or declarations of third persons who, freely and voluntarily, decided to proceed in accordance with their individual and personal will.

602. With respect to the fact that the FUNDACYT workers decided to associate and establish a trade union, it would be relevant to consider first whether these workers are subject to the provisions of the Labour Code. If so, there would be no problem with their having proceeded as they have done and in that case the Minister of Science and Technology would have transgressed the labour laws for the summary dismissal of ten workers on 19 October 2006, which would have been illegal. If that were not the case, that is to say, if the labour relations of the FUNDACYT employees are not regulated by the Labour Code, then they would be in the wrong, first, for submitting the notification that a trade union had been established and, second, for the processing and subsequent approval of the

application for registration. Furthermore, the draft collective agreement would have been inadmissible.

603. With regard to the complainant organization's claim that the Minister of Labour did not listen to the directors of the organization before refusing to recognize the establishment of the trade union, the Government states that, in order to explain the actions of the Ministry of Labour, it would have looked at the file to confirm whether the workers' request could have been dealt with in the time available and whether it was admissible, with regard to the provisions of section 444 of the Labour Code, which establishes a time limit of 30 days for the approval of the statutes of a workers' organization, beyond which, by law, an organization will be recognized as having legal personality.

604. With respect to the alleged failure to observe the rules of "due process", it should be noted that due process is referred to in article 23, paragraph 27, and article 24 of the Political Constitution of the Republic and it is considered a constitutional guarantee in proceedings that result in a judgement; however, in this case, the Ministry of Labour has the authority to approve or refuse a request to establish a workers' organization through an administrative procedure. Section 445 of the Labour Code allows for the refusal to register a trade union and section 448 establishes that workers must make an express declaration of their desire to associate. Chapter 1 of the section of the code on workers' associations does not require the Ministry to "hear the opposing party" because, it insists, the process is not litigious but administrative calling for the fulfilment of set requirements. With regard to the Ministry of Labour denying access to the file relating to the case despite a written request to the Legal Management Unit of the Ministry, the Government states that, having reviewed the files, no such written request exists in its records.

605. In its communication dated 14 March 2007, the Government states that it is necessary to establish the legal status of FUNDACYT, which was created by Executive Decree No. 1603, issued in *Official Gazette* No. 413 of 5 April 1999. Article 4 of its statutes states: "… FUNDACYT, a private, non-profit-making organization with social aims, operates as a technical and promotional body of the National Science and Technology System". The Foundation was initially presided over by the Ministry of Science and Technology as established in article 3, clause (g) of the same statutes. However, it receives public funding as shown by article 2, clause (b) on public budgets of the section on the financial level. Through Executive Decree No. 1605 published in *Official Gazette* No. 416 of 8 April, FUNDACYT obtained legal personality as a private, non-profit-making entity governed by the provisions of the Civil Code, including section 583 of that Code [according to] article 1 of the aforementioned Decree. Executive Decree No. 1829 of 1 September 2006, organizes the SNCT to manage transparently the funds allocated to science and technology, it re-establishes the CONACYT as the guiding body of the SNCT, while SENACYT, under the Office of the President of the Republic, remains the executive body of the system. The functions carried out by FUNDACYT shall be transferred to SENACYT. Likewise, Decree No. 1830 reforms the operative regulations for managing CEREPS funds and replaces the word FUNDACYT with SENACYT.

606. As a result of this reorganization, the personnel of FUNDACYT decided to establish a trade union, although the application was denied by the Ministry of Labour as it did not comply with the legal requirements. On 21 August 2006, the documentation relating to the organization of the trade union was presented again with a request for the employer to be notified. After being notified of the establishment of the trade union, Dr Luis Toñón Peña gave up his position as Legal Representative and Dr Nelson Gustavo Rodríguez Aguirre took his place as Executive Director of FUNDACYT and signed, as a worker, the constituent act of the trade union, along with other Directors: Ms Miriam Quinchimba, Administrative Financial Director; Dr Nelson Rodríguez, Technical Scientific Director; Dr Luis Toñón Peña, Director of Innovation and Dr Diego Almeida, Legal Adviser of

FUNDACYT. It can be concluded from the above that these officials were not workers subject to the Labour Code but to administrative law as they are directors of an institution that receives part of its budget from state funds.

607. Following the resignation of two members of the trade union, new personnel were contracted to join the trade union on trial contracts. It is important to highlight article 35, paragraph 9, of the Constitution, which states that: "With regard to those activities carried out by state bodies and which can be taken on, following complete or partial delegation, by the private sector, relations with the workers shall be governed by labour law, with the exception of executive, management, representative, advisory and departmental leadership functions or equivalent, which shall be subject to administrative law." The establishment of the trade union and the subsequent presentation of the draft collective agreement seek to obtain compensation for these officials who do not receive a general worker's salary, instead they are remunerated in accordance with their executive level, according to the assertions of the Legal Representative, the Minister of Science and Technology, in a communication to the Minister dated 30 October 2006. In this regard, the Government indicates that reference should be made to the letter written by Ms Rocío Salomé Jaramillo Subía, General Secretary of the FUNDACYT trade union, to the Minister of Labour as part of administrative process No. 057-2006, in which she states "in accordance with the relevant part of section 277, paragraph 4 of the Penal Code, I make this request as a public employee". There is an apparent contradiction given that, on the one hand, she claims to be a private employee within the meaning of section 305 of the Labour Code, and on the other, claims to be a public employee.

608. The Government indicates that the trade union was not established with the minimum of 30 workers, that FUNDACYT is a legal entity financed with state funds and that as the signatories to the act of constitution are, in accordance with section 36 of the Labour Code, representatives of the employer, jointly responsible for relations with the workers, they cannot participate in a trade union. Through Executive Decree No. 1968 published in *Official Gazette* No. 387 of 30 October 2006, the President of the Republic issued amendments to Executive Decree No. 1829 and added a transitional provision stating: "Sixth.– Exceptionally the Minister of Science and Technology is authorized to exercise or delegate, for as long as necessary, solely and exclusively, the legal representation of the Foundation for Science and Technology (FUNDACYT), in order to ensure that all information and tangible or intangible property is returned to the Ministry of Science and Technology (SENACYT), including that which is on loan for use or subject to any other legal terms. The corresponding inventory has been drawn up in accordance with this decree". This amendment confirms the constitutional principle that those who exercise executive, management or other similar positions are subject to administrative law.

609. In view of the above, the Minister of Science and Technology and Legal Representative of FUNDACYT submitted an extraordinary appeal for review citing article 178, clause (a) of the Legal and Administrative Statutes of the Executive, with the aim of annulling Ministerial Agreement No. 00427 of 18 September 2006, which approved the FUNDACYT trade union.

610. On 22 December 2006, the Minister of Labour and Employment accepted this appeal and initiated proceedings. He notified all interested third parties, as laid down in the Legal and Administrative Statutes of the Executive, who appeared at the proceedings. The appeal complied with all legal requirements and was designated No. 057-2006. On 2 February 2007, the hearing took place for those involved in the proceedings of the appeal for review No. 057-2006. On 22 February 2007, the appeal for review was concluded with a decision to accept the appeal for review presented by the Minister of Science and Technology thereby annulling Ministerial Agreement No. 00427 of 18 September 2006, which approved the FUNDACYT trade union. As a result of this decision, it can be concluded:

(1) from the preamble to the decision on the extraordinary appeal for review, which explains and confirms that the employees of FUNDACYT are not covered by the Labour Code, that the summary dismissal alleged by the CEOSL did not take place, since summary dismissal is a concept contained in the Labour Code, which applies to those who are classified as workers; (2) with respect to the presentation of the draft collective agreement, that it is necessary to emphasize that paragraph 2 of the decision clause of the decision orders a copy of the decision to be sent to the Regional Labour Directorate of Quito, so that the Legal Management Unit and Register of the Labour Inspectorate may proceed in accordance with the law by recording in the relevant file that the agreement has been annulled and that it is therefore no longer in force. The Labour Inspectorate shall abandon its proceedings regarding the draft collective agreement, given that these proceedings must fulfil certain requirements, which is no longer possible in this case. The Government states that it is necessary to make clear that due process was respected throughout the proceedings relating to the extraordinary appeal for review and that both parties were guaranteed the right to defence. The decision issued was based on the constitutional and legal regulations in force in the Ecuadorian legal system.

611. In its communication dated 7 May 2007, the Government sent copies to the trade union of the renunciations of 31 members who had been named as officials of that union, as well as copies of the dismissal appeals submitted to the judicial authority by Mr Norman Ricardo Quintana Ramírez, Legal Defence Secretary of the Executive Board of the FUNDACYT trade union and by Ms María Isabel Cevallos Simancas, Records and Communications Secretary of the Executive Board of the FUNDACYT trade union.

C. The Committee's conclusions

612. *The Committee notes that, in this case, the complainant organization alleges that, following relatively long proceedings, in September 2006, the administrative authority approved the statutes and registered the trade union of FUNDACYT; that the authorities of the Foundation submitted an extraordinary appeal for review calling for the ministerial agreement approving the FUNDACYT trade union and granting it legal personality to be annulled and declared invalid; that the FUNDACYT authorities have not responded to the request to negotiate a collective agreement and that, in retaliation, ten workers were dismissed without compensation. It further alleges that the FUNDACYT authorities are urging the workers to give up their membership of the workers' organization.*

613. *With regard to the extraordinary appeal for review submitted by the FUNDACYT authorities calling for the ministerial agreement approving the FUNDACYT trade union and granting it legal personality to be annulled and declared invalid, the Committee notes the Government's statement to the effect that: (1) the trade union was not established with the minimum of 30 workers, FUNDACYT is a legal entity financed with state funds, and as the signatories to the act of constitution are, in accordance with section 36 of the Labour Code, representatives of the employer, jointly responsible for relations with the workers, they cannot participate in a trade union; (2) in view of the above, the Minister of Science and Technology and Legal Representative of FUNDACYT submitted an extraordinary appeal for review citing article 178, clause (a) of the Legal and Administrative Statutes of the Executive, with the aim of annulling Ministerial Agreement No. 00427 of 18 September 2006, which approved the FUNDACYT trade union; (3) on 22 December 2006, the Minister of Labour and Employment accepted this appeal and opened proceedings; he notified all interested third parties, as laid down in the Legal and Administrative Statutes of the Executive, who appeared at the proceedings; the appeal complied with all legal requirements and was designated No. 57-2006; (4) on 2 February 2007, the hearing took place for those involved in the proceedings of appeal for review No. 057-2006; (5) on 22 February 2007, the proceedings were concluded with a decision to accept the appeal for review presented by the Minister of Science and Technology thereby annulling*

Ministerial Agreement No. 00427 of 18 September 2006, which approved the FUNDACYT trade union; and (6) due process was respected during the proceedings relating to the extraordinary appeal for review and both parties were guaranteed the right to defence.

614. *The Committee observes that the decision of the extraordinary appeal for review provides that:*

> *FOURTH – Section 459 of the Labour Code, concerning the constitution of trade unions, provides that "a 'comité d'empresa' (trade union) may be set up in every undertaking where 30 or more persons are employed, on the understanding that the following rules must be followed: (1) In order for the trade union to be properly constituted, the number of workers stated in Section 452 of this Code must necessarily participate in the constituent committee;". Section 452 states that "A trade union shall not be deemed to be duly constituted unless over 50 per cent of the workers in the undertaking attend the founders' meeting, but in no case can the trade union be constituted with less than 30 workers …" The file contains the constituent act of the trade union of the workers of the Foundation for Science and Technology (FUNDACYT), which refers to the provisional executive committee consisting of: Rocío Jaramillo Subía, General Secretary; Miriam Quinchimba Alvarez, Finance Secretary; Ricardo Quintana Ramírez, Legal Defence Secretary; María Isabel Cevallos, Communications and Records Secretary. With regard to the role of FUNDACYT employees, the Ecuadorian Institute of Social Security issued a statement on 21 August 2006, noting that the following individuals occupied certain posts: Rocío Jaramillo Subía, Head of the Information Centre; Miriam Quinchimba Alvarez, Administrative Financial Director; Ricardo Quintana Ramírez, Legal Adviser; María Isabel Cevallos, journalist. Furthermore, the constituent act of this committee was signed in support by, among others, employees with management responsibilities, departmental heads, advisers and even executives. Therefore, the trade union was constituted by employees whose labour relations are subject to administrative law. In this regard, Section 9 of the Labour Code states that "Workers are those who undertake to provide a service or carry out work. Such individuals are held to be workers and may be employees or labourers". FIFTH. – Section 1 of the Statues of the FUNDACYT, Executive Decree No. 1605, published in the Official Record No. 416 of 8 April 1994, states that: "The Foundation for Science and Technology (FUNDACYT), a private non-profit-making civil society, is hereby granted legal personality and its existence as a private, not-for-profit legal entity is approved …" According to the constituent act of assembly, Mr. Nelson Gustavo Rodríguez Aguirre, who was serving at the time as executive director of the institution, was a worker signatory to the constitution of the trade union. In this regard, Section 35:9, second indent, of the Political Constitution of the Republic states that: "Relations of the institutions covered by items 1, 2, 3 and 4 of Section 118 and of the legal entities established by law for the exercise of State power, with their servants shall be subject to the laws governing the public administration, except for those of labourers which shall be governed by labour law". It should be noted in this respect that indent four of the abovementioned Section states that: "With regard to those activities exercised by the institutions of the State and which can be carried out, following complete or partial delegation, by the private sector, relations with the workers shall be governed by labour law, with the exception of executive, management, representative, advisory functions or functions of departmental heads or equivalent, which shall be subject to administrative law." That is to say, in line with the terms of the Labour Code, a trade union shall not be deemed to be duly constituted unless over 50 per cent of the workers in the undertaking attend the founders' meeting, or unless there are at least 30 workers. This provision was clearly violated, given that, according to the documentation relating to this case, 32 persons signed the constituent act of the organization, of whom eight are not workers subject to the Labour Code but rather employees subject to administrative law. In this regard, Section three of the Organic Law concerning the Civil Service and Administrative Careers and the Standardization of Public Sector Wages states that "Scope. The provisions of the present law are compulsory throughout all State institutions, entities and bodies. Moreover, they are applicable to corporations, foundations, enterprises, companies and corporations in general in which State institutions are majority shareholders or to which they have made a full or partial capital contribution or an asset contribution of at least 50 per cent". SIXTH. – Given that the trade union was not constituted with a minimum of 30 workers and that FUNDACYT is a legal entity financed with State funds, and that the signatories to the act of constitution were, in line*

with Section 36 of the Labour Code, representatives of the employer, jointly responsible for relations with the workers, they could not participate in a trade union. SEVENTH. – The very fact that the text of Section 459:1 of the Labour Code was disregarded provides more than enough grounds for declaring that the issuing of the administrative act approving the statutes of the trade union of the workers of FUNDACYT was a clear error of law, without respect for the constitutional and legal provisions in force. In light of the above, by the power invested in it by the Political Constitution of the Republic and the Statutes of the Legal and Administrative Regime of the Executive Function, this authority RESOLVES: (1) to accept the extraordinary appeal for review lodged by Bernardo Creamer Guillén, Minister for Science and Technology and Legal Representative of FUNDACYT and, consequently, to render ineffective Ministerial Agreement No. 00427, of 18 September 2006, though which Dr José Serrano Salgado, Minister of Labour and Employment at the time, approved the statutes of the trade union of the workers of FUNDACYT.

615. *The Committee considers that the workers whose labour relations are governed by the Labour Code and those whose labour relations are governed by the laws regulating the public administration should enjoy, by virtue of the provisions of Article 2 of Convention No. 87, the right to establish organizations of their own choosing, subject only to the rules of the organization concerned. The Committee has taken due note of the Government's argument that some workers who belonged to the trade union were, in fact, in positions of trust with regard to their employer, including the executive director of the institution.*

616. *Furthermore, the Committee observes, with regard to this question, that for many years, the Committee of Experts on the Application of Conventions and Recommendations has referred to the need to reduce the minimum number of workers (30) required to establish associations, trade unions or assemblies (sections 450, 466 and 459 of the Labour Code), and to guarantee public servants the right to establish organizations to further and defend their occupational and economic interests (sections 59(f), 60(g) of the Public Service and Administration Careers Act and [article] 45, paragraph 10, of the Political Constitution) [see Report III (Part 1A) of the Committee of Experts, 2006, p. 86 of the English text]. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in relation to these questions. In these circumstances, the Committee requests the Government to take the necessary measures without delay to guarantee this right to the workers of FUNDACYT, allowing them to establish a trade union if they so desire, and if they have met the legal requirements that are in conformity with Convention No. 87.*

617. *With regard to the FUNDACYT authorities' alleged failure to respond to the request to negotiate a collective agreement, the Committee notes the Government's statement emphasizing that paragraph 2 of the decision on the aforementioned appeal for review, orders a copy of the resolution to be sent to the Regional Labour Directorate of Quito, so that the Legal Management Unit and Register of the Labour Inspectorate may proceed, in accordance with the law, by recording in the relevant file that the agreement granting legal personality to the trade union has been annulled and is no longer in force. The Labour Inspectorate shall abandon its proceedings relating to the draft collective agreement, given that these proceedings must fulfil certain requirements, which is no longer possible in this case. In this respect, the Committee expects that if, in future, a new trade union is established in FUNDACYT, the Government will take the necessary measures to guarantee the right to free collective bargaining between the parties.*

618. *With regard to the allegations relating to the dismissal of ten FUNDACYT workers without compensation, following the request to negotiate a collective agreement, and the allegations that the FUNDACYT authorities are urging workers not to join the trade union, the Committee notes the Government's information to the effect that: (1) in the preamble to the decision on the extraordinary appeal for review, it is explained and confirmed that FUNDACYT employees are not covered by the Labour Code, thus confirming that the summary dismissal alleged by the CEOSL did not take place since*

summary dismissal is a concept contained in the Labour Code, which applies to those who are classified as workers; (2) Mr Norman Ricardo Quintana Ramírez, Legal Defence Secretary of the Executive Board of the FUNDACYT trade union, and Ms María Isabel Cevallos Simancas, Records and Communications Secretary of the Executive Board of the FUNDACYT trade union, have appealed against their dismissals; and (3) all those who were designated officials and members of the trade union have decided to give up their membership. On this matter, the Committee observes that the Government provides no information as to why the officials and workers decided to give up their membership of the trade union; and, taking into account the particulars of this case, the Committee cannot rule out the possibility that the facts alleged by the complainant organization may have taken place at the request of the authorities. The Committee recalls that "anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions" and that "in no case should it be possible to dismiss a trade union officer [or member of a trade union] merely for having presented a list of dispute grievances; this constitutes an extremely serious act of discrimination" [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 769 and 808]. In these circumstances, the Committee requests the Government to provide information as soon as possible on: (1) the result of the judicial proceedings under way relating to the dismissal of the trade union officials, Ms María Isabel Cevallos Simancas and Mr Norman Ricardo Quintana Ramírez; (2) the other eight dismissals; and (3) the reason why the officials and members of the FUNDACYT trade union gave up their membership.*

The Committee's recommendations

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

(a) Recalling that workers whose labour relations are governed by the Labour Code and those whose labour relations are governed by the laws regulating the public administration should enjoy, by virtue of the provisions of Article 2 of Convention No. 87, the right to establish organizations of their own choosing, subject only to the rules of the organization concerned, the Committee requests the Government to take the necessary measures without delay to guarantee this right, allowing the FUNDACYT workers to establish a trade union if they so desire, and if they have met the legal requirements that are in conformity with Convention No. 87.

(b) The Committee reminds the Government that it may avail itself of the technical assistance of the Office with regard to amending the legislation relating to the minimum number of workers required to establish a trade union, association or assembly, as well as the Public Service and Administration Careers Act and the Political Constitution, in order to guarantee civil servants the right to establish organizations to promote and defend their professional and economic interests.

(c) The Committee expects that if, in future, a new trade union is established in FUNDACYT, the Government will take the necessary measures to guarantee the right to free collective bargaining between the parties.

(d) With regard to the allegations relating to the dismissal of ten FUNDACYT workers, without compensation, following the request to negotiate a collective agreement and the allegations that the FUNDACYT authorities

are urging workers to give up their membership of the trade union, the Committee requests the Government to provide information as soon as possible on: (1) the result of the judicial proceedings under way relating to the dismissal of the trade union officials, Ms María Isabel Cevallos Simancas and Mr Norman Ricardo Quintana Ramírez; (2) the other eight dismissals; and (3) the reason why the officials and members of the FUNDACYT trade union gave up their membership.

CASE NO. 2449

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

Complaint against the Government of Eritrea presented by
— the International Confederation of Free Trade Unions (ICFTU)
— the International Textile, Garment and Leather Workers' Federation (ITGLWF) and
— the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers Association (IUF)

Allegations: The complainant organizations allege that three senior trade union executives have been arrested by police and security forces in March and April 2005. They have been detained incommunicado and without charges since then; they have not been allowed access to legal counsel; and the authorities refuse to give any information on their whereabouts and the reasons for their arrest

620. The Committee last examined this case at its November 2006 meeting and on that occasion submitted an interim report to the Governing Body [see 343rd Report, paras 689–704, approved by the Governing Body at its 297th Session (November 2006)].

621. The Government sent new observations in a communication dated 23 April 2007, received by the Office on 15 June 2007.

622. Eritrea 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

623. At its November 2006 meeting, the Committee,

> Noting that three trade union leaders, Messrs Tewelde Ghebremedhin, Minase Andezion and Habtom Weldemicael, had been arrested over one year ago and that no information had since been made available in respect of the reasons for their arrest and the charges brought against them, deeply deplored the failure by the Eritrean authorities to ensure observance of

the fundamental human rights of these three trade union leaders to be informed of the charges brought against them, to have access to legal counsel and to be brought without delay before the appropriate judge. The Committee firmly urges the Government to take the necessary measures for the immediate release of these three trade union leaders. It further urges the Government to submit all relevant information, as precise as possible, concerning the arrests, particularly on the reasons for their arrest, charges brought against them, legal or judicial proceedings as a result thereof and the outcome of such proceedings.

B. The Government's reply

624. In its communication dated 23 April 2007, the Government informs that the three trade union leaders, namely, Mr Minase Andezion of the Eritrean Textile, Leather and Shoe Workers' Federation, Mr Tewelde Ghebremedhin of the Eritrean Food, Beverages, Hotels, Tourism, Agriculture and Tobacco Workers' Federation and Mr Habtom Weldemicael of the Coca-Cola base union, were released on 3, 7 and 18 April 2007 respectively and that there were no pending charges against them. The Government further indicates that the National Confederation of Eritrean Workers was taking the necessary measures to reinstate these persons.

C. The Committee's conclusions

625. *The Committee recalls that the present case concerns the arrest of three trade union leaders and their detention since March and April 2005.*

626. *The Committee welcomes the information provided by the Government that Messrs Minase Andezion, secretary of the Eritrean Textile, Leather and Shoe Workers' Federation, Tewelde Ghebremedhin, chairperson of the Eritrean Food, Beverages, Hotels, Tourism, Agriculture and Tobacco Workers' Federation, and Habtom Weldemicael, chairperson of the Red Sea Bottlers Coca-Cola Workers' Union, were released on 3, 7 and 18 April 2007, respectively.*

627. *The Committee deeply regrets, however, that the Government provides no particulars on the reasons for their arrest and two-year detention, the charges brought against them or whether they had at any time been brought before an independent and impartial judiciary. In view of the failure of the Government to provide sufficient information despite the complainants' contention that they were arrested and detained on grounds related to their trade union activities and the Committee's previous request to this effect and from the information available to it, the Committee can only infer that the arrest and detention of the three trade union leaders were in fact linked to their trade union activities. The Committee considers that, while the exercise of trade union activity or the holding of trade union office does not provide immunity as regards the application of ordinary law, the continued detention of trade unionists without bringing them to trial may constitute a serious impediment to the exercise of trade union rights [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 82]. While noting with interest the release of the three trade union leaders, the Committee considers that, when measures of arrest and detention are taken on trade union grounds, the mere release of trade union leaders after two years of detention is not in itself sufficient and must be accompanied by an appropriate remedy for the damages suffered. While taking note of the Government's indication that the National Confederation of Eritrean Workers was taking the necessary measures to reinstate the three trade union leaders, the Committee urges the Government to provide any necessary assistance for the reinstatement of Messrs Minase Andezion, Tewelde Ghebremedhin and Habtom Weldemicael in their posts and to ensure that they are adequately compensated for the damages which they have suffered during their two-year detention. The Committee requests the Government to keep it informed of all steps taken in this regard. The*

Committee also requests the Government to refrain from arresting trade union leaders in the future.

The Committee's recommendation

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

In view of the failure of the Government to provide sufficient information concerning the two-year detention of the three trade union leaders in this case, despite the complainants' contention that they were arrested and detained on grounds related to their trade union activities and the Committee's previous request to this effect and from the information available to it, the Committee can only infer that the arrests and detention of Messrs Minase Andezion, Tewelde Ghebremedhin and Habtom Weldemicael were in fact linked to their trade union activities. In these circumstances, the Committee urges the Government to provide any necessary assistance for the reinstatement of the three trade union leaders in their posts and to ensure that they are adequately compensated for the damages which they have suffered during their two-year detention. The Committee requests the Government to keep it informed of all steps taken in this regard. The Committee also requests the Government to refrain from arresting trade union leaders in the future.

CASE NO. 2516

INTERIM REPORT

Complaint against the Government of Ethiopia presented by — the Ethiopian Teachers' Association (ETA) and — Education International (EI) supported by — the International Confederation of Free Trade Unions (ICFTU) and — the World Confederation of Labour (WCL)

Allegations: The complainant organizations allege serious violations in the ETA's trade union rights including continuous interference in its internal organization preventing it from functioning normally, and interference by way of threats, dismissals, arrest, detention and maltreatment of ETA members

629. The complaint is contained in communications dated 11 September and 10 October 2006 and 18 June 2007 from the Ethiopian Teachers' Association (ETA) and Education International (EI). The International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) associate themselves with the complaint in a communication dated 13 September 2006.

630. The Government sent its observations in communications dated 22 February, 23 May and 19 October 2007.

631. Ethiopia 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

632. In their communications of 11 and 13 September 2006, the complainants allege that, since April 2003, when the Committee on Freedom of Association last commented on the EI/ETA complaint against the Government for non-compliance with Conventions Nos 87 and 98 [see Case No. 1888, 332nd Report], the Government has continued to interfere in ETA activities and to harass and repress its members.

Exclusion of teachers from the right to join unions

633. The complainant organizations state that teachers employed in the public sector are deprived of trade union rights. Under the new Labour Proclamation of 2003, only teachers employed in private schools have the right to form and join trade unions and to engage in collective bargaining. However, more than 130,000 teachers employed in the public sector are only guaranteed the right to form professional associations. In fact, the Constitution of the country excludes many categories of workers, such as teachers and civil servants, from the right to form and join trade unions. This is enshrined in the Labour Proclamation of 2003.

Interference in ETA activities and functioning

634. The complainant organizations allege that the Government has continued to interfere in the administration of the ETA preventing it from organizing its activities normally. The complainants give numerous examples of cases of interference in ETA activities by the authorities, including the suspension of numerous ETA meetings by the security forces since 2003, harassment of ETA members and confiscation of ETA materials.

635. The complainant organizations indicate that the issue as to which of the two coexisting executive boards of the ETA represented the legitimate leadership of the ETA was still in dispute. Closely linked to that issue are the assertions that the ETA's assets and property have been misappropriated. Indeed, a ruling from the Federal High Court on 28 November 2003 asking for the reopening of the ETA's offices had never been implemented. On the contrary, the ETA received a warrant in December 2003 summoning it to the Supreme Court which decided on 14 January 2004 that ETA offices should be resealed and a further hearing would take place. While the hearing referred to never took place, in March 2006, the Federal High Court revoked its decision of November 2003 and ruled that leaders of the original ETA were to hand over all properties and assets to the leadership of the new ETA. The ETA appealed this decision.

636. As of April 1993, the membership dues of the ETA have been channelled to the new ETA through the check-off system, despite petitions and protests by teachers who claimed that their membership fees were not going to the right organization. Teachers who filed suit were subject to harassment. Some chose to voluntarily pay another contribution to the ETA since their fees were being redirected to the new ETA. To be able to operate, the ETA issued membership cards in February 2003 aimed at providing a more regular payment of the union dues. As the ETA is reluctant to provide public information about the number of members, the subscription forms are kept hidden so that the police cannot get hold of the

list of names. The ETA asserts that this situation underlines that openly declaring membership in the ETA is perceived as a risk.

637. In a communication of June 2007, the complainants indicate that, in November 2006, the Supreme Court ruled against the Federal High Court decision of 30 March 2006 on the grounds that it had failed to address the main issues of the dispute and instructed that they had to be properly investigated. Yet, in its latest ruling of 21 June 2007, the Federal High Court failed to follow the instructions of the Supreme Court, holding that the new ETA has a legal status which entitles it to possess the property of the previous ETA. The complainants consider that the Federal High Court did not base its verdict upon an independent and proper examination of the facts. The court has not only failed to explain the legal status of the original ETA; it also ignored the general assembly and leadership election organized in February 1993 by the original ETA (before those of the new ETA) and its initial registration with the Ministry of Interior.

638. The complainant organizations also referred to the occupation of the ETA's offices. The ETA headquarters in Addis Ababa is a large compound of 400 m^2 composed of a three-storey building, a one-floor building, a meeting hall of 80 m^2 and a yard enclosed by a fence. These offices were sealed for the first time in 1993 after the creation of the new ETA. In March 1996, seals were apposed on the meeting hall and offices of the president and the secretary-general. Most of the offices of the three-storey building have been rented out and the tenants have received notification that their rent is being paid to the new ETA. Despite a ruling by the Federal High Court of 28 November 2003 that the ETA offices be reopened, on 30 January 2004, ten policemen and leaders of the new ETA entered the ETA compound to seal the offices once again. As of 31 August 2006, most ETA offices and the meeting hall were still sealed.

639. On 1 November 2005, six armed representatives of the federal police force in uniform entered the ETA compound in the evening, harassed ETA staff and ransacked the premises. The offices were occupied and searched until 14 November, when electronic equipment was seized. On 2 November 2005, the secretary-general of the ETA, Mr Gemoraw Kassa, accompanied by representatives of the Dutch Teachers' Union *(Algemene OnderwijsBond (AOb))* were not allowed to enter the ETA compound guarded by armed policemen. On 14 November, Mr Kassahun Kebede, chairperson of the Addis Ababa branch, was briefly taken out of prison to witness how his office was searched by the police. The offices of the ETA president and a typist which had been sealed since March 1996 were also searched. The court warrant was only produced that same day. Materials, including a computer, a laptop, a fax, a scanner, floppy disks, books and training materials were confiscated. The materials, which were donated to the ETA via the international trade union movement, have not yet been returned. The ETA insists that the confiscation of such material and documents seriously undermines its capacity to carry out the work for its members and to implement some projects. It firmly asks that the equipment and the documents be returned.

640. An urgent General Assembly was called for by ETA members following the ruling of March 2006 by the Federal High Court. Accordingly, arrangements were made for the meeting to take place on 30 April at a hotel facility in Addis Ababa. However, two days before the meeting, the ETA secretary-general was informed by the management of the hotel that it received a warning from government security forces not to hold the meeting. As an alternative, the ETA had to quickly rent tents and erect them in the trade union compound. While regional delegates were gathering at the head office to report their arrival and collect relevant documents, the trade union officials realized the presence of security forces in the compound and in nearby streets. Two ETA Executive Board members were followed by men on their way home. On 30 April, special forces, heavily armed and in their military fatigues, encircled the trade union compound. The officer in

command entered the compound and ordered its immediate evacuation on the grounds that the meeting was illegal. People were forced to vacate. On their way back to their hotels, certain delegates (whose names were provided by the complainants) were dispossessed of their identity cards and trade union papers, their names were recorded and some were arrested for a few minutes. The identity cards were returned but not the documents. The meeting which was disbanded had to be reconvened later that year.

641. Another session of the special General Assembly had to be planned on 30 August 2006. The meeting was scheduled to take place at the Confederation of Ethiopian Trade Unions (CETU) building in Addis Ababa. The ETA had notified all relevant authorities. However, after the morning session of the first day of the meeting, which was attended by some local and foreign guests, the police – armed with batons and guns – surrounded the meeting hall and locked personal belongings inside it. The search for an alternative venue showed that at least three hotel managements had been warned by security forces not to rent their facilities to the ETA. Consequently, the meeting was reconvened the day after in the ETA compound with a reduced audience and agenda. On 1 September, the ETA was informed that the documents and belongings locked inside the CETU building could be collected. However, various writings such as personal notes of the morning session of 30 August, reports from regions, lists of members and some identification cards were removed from folders and notebooks. Furthermore, ETA officials carrying confidential documents were intercepted by the police the same day, taken to the Central Criminal Investigation Bureau (known as *Maekelawi*) and detained for the remainder of the day.

Harassment, arrest, detention and maltreatment of teachers in connection with their affiliation to the ETA

642. The complainants allege that, since 2003, dozens of teachers and ETA members have been dismissed, involuntarily transferred, and many detained and ill-treated, particularly during the widespread demonstrations after the parliamentary elections of May 2005.

643. The complainants provided the Committee with a list of 243 teachers who had been harassed, sacked, tortured or detained in 2002 and 2003, a list of 94 ETA members who had been arbitrarily relocated, dismissed or detained in 2004, and a list of 68 ETA members who were reported to have been imprisoned in 2005. According to the complainants, detained teachers are sometimes imprisoned far away from their place of residence and their families.

644. The complainants reported that, after the negotiations between the Government and opposition parties broke down sparking a new wave of protests, teachers were summoned on 5 November 2005 to show up in schools whatever the circumstances, even if they had to cross walls of bullets. Teachers were told to keep the children in schools and not let them leave the school compounds. In the event that parents came to collect their children, teachers were instructed to refuse and keep the pupils. Failure to do so would be severely sanctioned.

645. On 21 November 2005, the ETA provided EI with a list of 40 teacher members of the ETA who were reported to have been imprisoned in the context of a government crackdown. It is believed that they have been targeted for being ETA members and that many more teachers have been detained, particularly in Bahir-Dar and Dessie, as well as in Awassa and Ambo. The ETA also found out that a list of persons supposedly wanted by the police appeared in the weekly newspaper *Efitin*. The name of Dr Taye Woldesmiate, president of the ETA who lives in exile, appeared on that list. In December 2005, the ETA National Board was informed through reports from regions that at least 68 teachers were arbitrarily arrested and detained. Ten teachers were released within a few days; however, many teachers remained detained without any charge filed against them (see list transmitted with

the complaint in the annex). The complainants assert that detained teachers are imprisoned in jails far away from their families. The complainants referred to the cases of Ms Mulunesh Ababayehu Teklewold and Mr Mazengia Taddesse who are teachers in Addis Ababa where their families reside but were taken to Zuwai prison which is 165 kilometres away.

646. Seven teachers who were arrested in November/December 2005 were still in detention on 14 March 2006. Mr Kassahun Kebede, chairperson of the Addis Ababa branch of the ETA, was detained in the capital; Ms Mulunesh Ababayehu Teklewold was imprisoned in Zuwai, Mr Mesfin Balcha was detained since 5 November in Awassa, Mr Wolle Ahmed was detained since 14 November in Wollo, and Mr Sahlu Ayalew, Mr Mulugeta Gebru and Mr Yehualaeshet Molla were imprisoned in Dessie. Mr Asmare Abreha, teacher at Abyot Qiris High School in Addis Ababa, was reported missing since 18 February 2006.

647. Mr Abate Angore, a senior ETA National Board member, was brought to court in February 2005 after being freed on bail since his first arrest in December 2002 when he had been charged for an interview made in 2001 on police violence against an Addis Ababa university student protest. His arrest, on 2 February 2005, came on the day he was due to address a meeting on human rights and teachers' issues in Wolaita.

648. Teferi Gessesse, Kassahun Kebede, Tesfaye Yirga, Tamirat Testfaye, Wasihun Melese, Dibaba Ouma, Ocha Wolelo, Bekele Gagie and Serkaalem Kebede, all members of the ETA Addis Ababa branch, were arrested by security forces in September 2005 following a meeting held to discuss the preparation of World Teachers' Day. Each was detained for a whole day and treated rudely. Teferi Gessesse and Tamirat Tesfaye reported they were severely beaten when they objected to having their picture taken.

649. Ms Mulunesh Ababayehu Teklewold, a teacher in a junior secondary school and member of the ETA, was arrested on 9 November 2005 and detained without charge in the Kality central prison until her release on 9 June 2006, despite the fact that the Constitution of Ethiopia mandates that detainees be taken to court within 48 hours of their arrest and informed of the reasons for their detention. She was freed without any explanation and did not receive any pay during her time in detention. She resumed teaching but has been transferred to a school away from her place of residence.

650. Mr Wasihun Melese, an elected officer of the ETA National Board since August 2006, was arrested in his house without any warrant and taken to the Maekelawi Investigation Bureau on 23 September 2006. Mr Melese who is chairperson of the Addis Ketema zone teachers' association, had already been previously arrested and detained in 2005 for having participated in the preparations for World Teachers' Day.

651. Mr Anteneh Getnet, member of the ETA Addis Ababa Regional Council, was suddenly dismissed in 2005 after providing his colleagues with ETA material. After winning his case in court, he was awarded financial compensation and a position in another school. However, on May 2006, he was abducted by four unidentified men, beaten and left for dead in the south-west region of Addis Ababa. He suffered broken ribs and numerous contusions and lung problems which would prevent him from ever teaching again. Mr Getnet was subsequently arrested on 23 September 2006 during a teachers' meeting he was attending in Addis Ababa. He appeared in court the following day with Mr Wasihun Melese. During the hearing, nothing was stated or mentioned about the nature of the offence they were allegedly accused of. However, they were remanded in custody for 14 days on request of the police for additional time to investigate their case. They were released on 4 October 2006 and were to appear in court again on 9 October 2006.

652. In their communication of 18 June 2007, the complainants indicate that Mr Getnet had again been arrested on 30 May 2007 and detained with two other members of the ETA in the Kality Central Prison. The complainants express concern at the fact that all three had previously been arrested in December 2006, detained and tortured, and feared that they might be submitted to ill-treatment to make them confess membership in an illegal organization. Mr Getnet was accused of "involvement in criminal activities and acting as a member of an illegal organization called the Ethiopian Patriotic Front". The complainants assert however that Mr Getnet had explained on several occasions that he was tortured during his detention, suspended with his limbs tied and forced to confess that he was a member of the Ethiopian Patriotic Front. One of his arms is still misshapen.

653. The complainants also report the rearrest and detention on 30 May 2007 of Mr Meqcha Mengistu, chairperson of the ETA's East Gojam Zonal Executive. He had been arrested previously on 17 December 2006 and detained for four months during which he was heavily beaten. To make him confess that he was a member of the Ethiopian Patriotic Front, security agents searched his home without any warrant, mistreated his parents and locked up his children. Another member of the ETA, Mr Woldie Dana was arrested and detained from December 2006 to 22 March 2007 by a court ruling. He too was subsequently arrested on 4 June 2007 and charged with being a member of the Ethiopian Patriotic Front.

654. The complainants also expressed concern about Mr Tilahun Ayalew, chairperson of the ETA Awi zone, who disappeared on 28 May 2007 when security agents came to arrest him in his house. His wife was also arrested and detained until 29 May. Mr Tilahun Ayalew had previously been arrested on December 2006 – with Mr Anteneh Getnet and Mr Meqcha Mengistu – without any court warrant. However, he was not immediately taken to the police station, but abducted to the jungle where he was beaten until he lost consciousness. He was tortured for four days and transferred to the Addis Ababa Police Commission on 26 December 2006. He was released two days after by order of the Addis Ababa City Administration First Instance Court. However, he was again arrested by the police and remained imprisoned until the Federal First Instance Court ordered his release on 12 March 2007. Mr Ayalew was unable to walk properly due to injuries suffered in detention.

655. Mr Kassahun Kebede, chairperson of the ETA Addis Ababa branch, was arrested on 1 November 2005 and has been detained ever since. He is not a member of any political party or grouping. Mr Kebede was arrested together with other civil society leaders, following general public unrest related to the parliamentary elections. On 7 November 2005, he had not yet been made aware of the charges against him. A week later, he was briefly taken out of prison to witness how his office and the office of the president of the ETA – Dr Taye Woldesmiate, who has been in exile in the United States since August 2005 – were searched by the police. Documents and electronic equipment were removed and the offices sealed. Mr Kebede appeared at the Federal High Court in December 2005 with 50 other civil society leaders and senior leaders of the Coalition for Unity and Democracy (CUD). They were charged, in different groups, with treason, outrages against the Constitution, armed conspiracy or attempted genocide. Nearly all the charges can carry death sentences. The lawyers for Mr Kebede and two others argued that the charges were vague, absurd and unfounded and asked that they either be dismissed or amended. The ETA maintains that these individuals organized peaceful protests and were not responsible for the violence that erupted, particularly when security forces used live ammunition against demonstrators and killed dozens. Mr Kebede and all defendants were moved to the Kality prison in December 2005, where their conditions of detention are reported to be very difficult. While his trial began on 2 May 2006, no evidence has been produced to justify Mr Kebede's presence in the so-called "Defendant's trial", let alone his imprisonment.

656. The complainants regretted the actions taken by the Government to discourage teachers from seeking membership in the ETA as well as the continuous repression and interference. They recalled that the case of Ethiopia was recently discussed during the 96th Session (June 2007) of the International Labour Conference where the Committee on the Application of Standards requested the Government to accept an ILO direct contacts mission.

B. The Government's reply

657. In its communication of 22 February 2007, the Government provided extensive background information on the country's history, with an emphasis on international treaties guaranteeing labour rights ratified by the country and its collaboration with the ILO. The Government explains that, in accordance with article 9(4) of the Constitution, "all international agreements ratified by Ethiopia are integral part of the law of the land". Judicial organs, both at federal and regional levels, have the obligation to ensure the enforcement of human rights and the House of Federation has the duty to guarantee the compatibility of domestic legislation with international instruments ratified by the country. This has necessitated the revision of numerous legislative texts including the Labour Proclamation.

658. Article 31 of the Constitution provides that "every person has the right to freedom of association for any cause or purpose", and article 42 lists categories of workers – including factory workers and farmers – who have the right to form associations to protect and improve their conditions and economic interests and to express grievances, including the right to strike. The Labour Proclamation of 1993 had already guaranteed several rights of workers including the right to form and join trade unions. While the Labour Proclamation of 2003 amending the text of 1993 was adopted to bring existing labour law more in line with international Conventions and other legal commitments, the new Labour Proclamation protects the rights of workers, such as right to equal pay, rest, compensation, public holidays, leave, decent working conditions, occupational safety, collective bargaining and the right to strike. The text also provides for the right to establish and form trade unions for every worker, the right to collective bargaining and a complaint mechanism for trade union-related discriminatory practices. The Labour Proclamation entrusts the Ministry of Social and Labour Affairs with the authority to register organizations including trade unions, federations and confederations. The Government explained that the Ministry is required to issue a certificate of registration within 15 days of receiving the application, that limited grounds for cancellation are admitted and that cancellation of registration of an organization may only be pronounced by courts of law in accordance with the grounds specified under the Labour Proclamation.

659. In relation to the rights of teachers in the public sector, the Government confirmed that a civil service law reform is ongoing with a view to provide further protection and guarantees to the rights of civil servants.

660. As regards the situation of the ETA, the Government stated that the education sector in Ethiopia is one of the biggest employers in the country. In 1949, teachers in Addis Ababa formed the first teachers' association. The ETA, a nationwide organization, was established in 1968. However, under the *Derg* regime, this organization became an ideological tool for mobilizing teachers. Following the overthrow of the *Derg* regime, teachers initiated the process of forming a new association. At that time, a group of individuals headed by Dr Taye Woldesmiate gathered themselves as a coordination committee.

661. However, in March 1994, teachers representing all regions of the country decided to form another national coordination team. They organized and held a founding national

conference in June/July 1994. The new ETA's Articles of Association were adopted and the Association officially launched. The Association under the same name, ETA, applied for registration and was given a certificate since there was no other organization having legal status at the time. Since then, it continues to process the renewal of its certificate by providing annual activity and financial reports. According to the Government, teachers pay their dues to the organization they are registered with as members. Thus, the Government rejects the allegations according to which it had illegally transferred union funds to the new ETA.

662. The Government affirms that the rival group which called itself a coordination committee – headed by Dr Taye Woldesmiate – attempted to discredit the new ETA. Owing to their opposition to the Government, they worked hard to discredit it, often by mobilizing people for violent action against the new political dispensation, including the new education policy implemented in 1994. They also corresponded with international organizations in which the previous ETA had been a member and claimed themselves as legitimate successors.

663. The Government supports the new ETA bringing a case against these individuals who are allegedly undertaking activities illegally under its name. In its submission, the new ETA requested the Federal High Court to condemn the individuals and to order the transfer of certain properties they possessed. In its decision of 28 November 2003 the Federal High Court ruled that the plaintiffs did not present sufficient evidence establishing that they had standing in the case and dismissed it. However, the Supreme Court reversed the decision on 22 February 2006 ruling that the appellants have legal standing to bring the case and ordered the Lower Court to try the case on its merits. On 30 March 2006, the Federal High Court ruled that properties should be handed over to the new ETA. On 27 November 2006, the Supreme Court again reversed the Lower Court decision on the grounds that it was based on the wrong premise that the Supreme Court had decided on the question of which group comprised the legitimate representatives of the ETA. The Lower Court was ordered to retry the case. On 19 October 2007, the Government transmitted the judgement of the Federal High Court of 21 June 2007 whereby the Court decided that the new ETA had a legal status which entitled it to possess all properties of the previous ETA, including buildings, equipment and vehicles worth 620,000 Ethiopian birr. The Government expressed the view that the judgement had clarified the legal status of the Association, the status of the competing executive committees and the restitution of the properties belonging to the Association. While the defendants have the right to appeal the judgement to the Federal Supreme Court, the Government indicated that there was no information as to whether they have exercised their right. The Government emphasized that the ILO supervisory bodies should play a constructive role in acknowledging that due process of law is followed smoothly without any undue external intervention or pressure.

664. The Government further provided background information on the condition of teachers and education policy over the last decades as well as on the context of the elections in May 2005 and emphasized that they were a mark of its readiness to consolidate democracy. The Government affirmed that a complete overhaul of teachers' education was undertaken through Teachers Education System Overhaul (TESO) in 2003 with the view to "democratize" teachers' education by giving teachers the opportunity to take the initiative in shaping the content of education and the way it is delivered. The Government pointed out that it does not force teachers to follow or accept the ruling party's political views. Trade unions participated fully during the May 2005 election campaign by providing voters' education and holding debates. However, following the election results and before the finalization of dispute resolution, extreme elements of the opposition, journalists and members of non-governmental organizations (NGOs) called for a violent insurrection which devastated the country. In response to the targeting of schools, the Government

decided to take measures to ensure that they remained an open and a safe place for children. It is therefore unfounded to allege that the Government closed down schools.

665. The Government asserts that measures had to be taken to address the violence. An independent inquiry commission was set up to investigate the circumstance in which the violence occurred and concluded that the measures taken were not disproportionate. This contradicts the allegations of the complainants which referred to massive human rights violations.

666. The Government stresses that the arrests of alleged ETA members does not relate to their trade union membership, neither were they ill-treated during their arrest. Mr Kasshun Kebede, Mr Wasihun Meles and Mr Anteneh Getnet were arrested on grounds of their direct involvement in the violence and their statements to incite people to be involved in the violence. They are charged with crimes of treason, disrupting the constitutional order and attempted genocide and are being tried before the criminal bench of the Federal High Court since May 2006. Their conditions of detention are respectful of those guaranteed under the Constitution and visits by their families, lawyers and international institutions are assured. Concerning Dr Taye Woldesmiate, he is being tried in absentia for his actions in inciting people to engage in violent insurrection.

667. In its concluding remarks, the Government insists that the domestic legislations are consistent with international human rights instruments including ILO Conventions ratified by Ethiopia. Several trade unions are registered both at regional and federal levels. The CETU, as an umbrella group for trade unions, is conducting its activities independently without any interference from the Government and with the support of the ILO. The Government emphasized that it improved the status and condition of teachers by taking measures to rectify previous misguided education-related polices. Teachers in Ethiopia currently run one of the largest and most active professional unions working for the protection of the interest of teachers.

668. In its communication of 23 May 2007, the Government provided additional information on the situation of Mr Kassahun Kebede. In its decision of April 2007, the Federal High Court in the case of outrages against the constitutional order of the State ordered the release of Mr Kebede and 27 other individuals saying that they had no case to answer. The Government recalled that the case against Mr Kebede had no relation whatsoever to his trade union activities.

669. Although of the view that most of the allegations are baseless and inaccurate, the Government stated that, in conformity with its approach to fully cooperate with the ILO, it had decided to investigate all allegations of the complainants. The Government would reply to them as promptly as possible in a detailed report.

670. In its communication of 19 October 2007, the Government recalls the invitation made by the ILO Conference Committee on the Application of Standards to the Government to accept a direct contacts mission on matters also concerning the ETA, and states that the modalities for such a mission are being worked out between the Government and the Office.

C. The Committee's conclusions

671. *The Committee observes that the present case refers to allegations relating to the exclusion of teachers in the public sector from the right to join trade unions by virtue of the national legislation; interference in ETA administration and activities; and harassment, arrest, detention and maltreatment of teachers in connection with their affiliation to the ETA.*

672. *The Committee recalls that it has been addressing very serious allegations of violations of freedom of association involving governmental interference in the administration and functioning of the ETA, and the killing, arrest, detention, harassment, dismissal and transfer of members and leaders of ETA since November 1997 [see 308th Report, paras 348–362].*

673. *While noting that the Government had committed itself to send as promptly as possible a report responding to all allegations of the complainant organizations, the Committee observes with regret that the Government has limited its reply to a general overview and a few statements with regard to the extremely serious allegations of detention and torture of ETA members.*

674. *With respect to the allegations relating to the exclusion of teachers in the public sector from the right to join trade unions by virtue of the national legislation, the Committee notes that, under the new Labour Proclamation of 2003, teachers employed in private schools have the right to form and join trade unions and to engage in collective bargaining. However the complainants state that certain categories of workers, including teachers employed in the public sector and civil servants, are excluded from the right to form and join trade unions. This is enshrined in the Labour Proclamation of 2003.*

675. *The Committee wishes to recall that the standards contained in Convention No. 87, ratified by Ethiopia, apply to all workers without distinction whatsoever, and are therefore applicable to employees of the State. Therefore, public employees (with the sole possible exception of the armed forces and the police, by virtue of Article 9 of the Convention) should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 218 and 220].*

676. *The Committee notes from the Government's reply that, in the process of revision of the civil servant Proclamation, the right of civil servants (including teachers in public schools) would be further protected and guaranteed. The Committee urges the Government to take the necessary measures as a matter of urgency to ensure observance of the right to freedom of association of civil servants, including teachers in the public sector in accordance with Convention No. 87, ratified by Ethiopia. The Committee asks the Government to keep it informed on any progress made in this respect.*

677. *With regard to the allegations relating to interference in ETA administration and activities, the Committee notes the large number of ETA meetings being suspended by security forces that were mentioned by the complainants. These include among others the ban of the World Teachers' Day celebrations in 2003 and 2004, and the suspension of the special General Assembly of the ETA in April and August 2006 by the use of force, even in trade union premises. The Committee also notes the complainants' allegations of harassment of ETA members during these interferences and of the confiscation of ETA materials and documents which undermined the capacity of the organization to carry out its daily work and impeded the implementation of projects.*

678. *In this regard, the Committee recalls that the right to organize public meetings constitutes an important aspect of trade union rights. In particular, the right of occupational organizations to hold meetings in their premises to discuss occupational questions, without prior authorization and interference by the authorities, is an essential element of freedom of association and the public authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered [see* ***Digest****, op. cit., para. 130]. Furthermore, the entry by police or military forces into trade union premises without a*

judicial warrant constitutes a serious and unjustifiable interference in trade union activities. Searches of trade union premises should be made only following the issue of a warrant by the ordinary judicial authority where that authority is satisfied that there are reasonable grounds for supposing that evidence exists on the premises material to a prosecution for a penal offence and on condition that the search be restricted to the purpose in respect of which the warrant was issued [see ***Digest****, op. cit., paras 181 and 185]. The Committee observes that the Government has not provided its observations on these very serious allegations of trade union rights infringement and requests it to do so without delay so that it may examine this question in full knowledge of the facts. In the meantime, it requests the Government to ensure respect for these principles and to return any confiscated material that may have been seized without an appropriate warrant or that has no relation to any outstanding charges.*

679. *Regarding information on the case brought before the court and the numerous court decisions on the properties and assets of the ETA, the Committee notes that, in its latest ruling of 21 June 2007, the Federal High Court awarded the property of the previous ETA to the new ETA, which was considered as legally registered and entitled to possess the property. According to the complainants, the Federal High Court did not base its verdict on an independent and proper examination of the facts and had not only failed to explain the legal status of the original ETA, but had also ignored the general assembly and leadership election organized in February 1993 by the original ETA and its registration with the Ministry of Interior. In the Government's opinion, the judgement had clarified the legal status of the Association, the status of the competing executive committees and the restitution of the properties belonging to the Association. The Government further requested that due process of law be allowed to take place without any undue external intervention or pressure.*

680. *While taking due note of the Government's request that the Committee not prejudge the domestic judicial process, the Committee wishes to recall that, although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that its competence to examine allegations is not subject to the exhaustion of national procedures. In addition, the Committee wishes to recall a certain number of points which it considers should be borne in mind when reviewing the issues raised in this case.*

681. *The Committee recalls that it has been examining the question of Government interference in the ETA on and off for over a decade, when it considered an earlier complaint on essentially the same issues raised here (Case No. 1888). At that time, the Committee had taken note of the allegations concerning the restructuring of the ETA in 1993–94, the election of new leaders and its recognition by the Government, only to be confronted shortly afterwards by a breakaway group of the Association registered and recognized by the Government as "the Ethiopian Teachers' Association". According to the complainants at the time (also EI and the ETA), the Government had the membership fees transferred to the rival group and froze the complainants' accounts, resulting in its effective suspension by administrative authority. While the elected leadership of the ETA had expressed its willingness to submit to new elections to confirm who the teachers wanted to represent them, the rival group would not agree [see 308th Report, paras 327–347].*

682. *Later, the Government argued that, since the leaders of the ETA were charged with committing terrorist activities, any guarantees of freedom of association must be denied to them and their members. To justify the measures taken, the Government relied on alleged actions of individuals within the organization, none of whom had been found guilty of involvement in terrorist activities [see 310th Report, para. 382]. In addition, the Government provided the court judgement of December 1994, which had not taken any decision as to the legitimate leadership of the ETA, but rather stated that the decision was*

to be taken by the ETA's General Assembly. The Government claimed that a General Assembly had been called and the members of the Executive Committee duly elected thereby did not include those led by Dr Woldesmiate, whereas the complainants maintained that their willingness to submit to new elections had been rejected by the rival group [see 316th Report, para. 493].

683. *As a result, from 1994 to June 2007, and with a background of numerous allegations of recurring interference, sealing of premises, confiscation of property, transfer of union dues to the rival ETA group, harassment, arrests and detentions, no final decision had been reached as to the legitimate representatives of the ETA and even the Government itself has referred to two ETAs, separate organizations with the same name (see* ***Provisional Record*** *No. 22, International Labour Conference, Geneva 2007). In these circumstances, the Committee can only express its deep concern at the extreme delay in the determination of the legitimate ETA leadership – some 13 years – and finds itself bound to query whether, in light of the background given above, such a determination can actually be made without a full and independent investigation into all of the allegations made in this case and in the earlier Case No. 1888 relating to the steps taken by the Government to support the rival ETA group and undermine the complainant organization. The Committee urges the Government to take the necessary steps to institute such an investigation and to provide full details on the progress made in this regard and on the conclusions reached. In the meantime, the Committee urges the Government to ensure that the ETA may carry out its activities without any government repression. The Committee further requests the Government to provide information on any measure or action taken following the ruling of 21 June 2007 by the Federal High Court.*

684. *With regard to the alleged acts of harassment, arrest, detention and maltreatment of teachers in connection with their affiliation to the ETA, the Committee deplores the seriousness of the alleged acts and the large number of ETA members affected. The Committee firmly recalls that, as a general principle of trade union rights, the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest****, op. cit., para. 44].*

685. *The Committee notes the extensive information provided by the complainants on the arrest on 2 February 2005 of Mr Abate Angore, a senior ETA National Board member; the arrest and detention in September 2005 of Teferi Gessesse, Kassahun Kebede, Tesfaye Yirga, Tamirat Testfaye, Wasihun Melese, Dibaba Ouma, Ocha Wolelo, Bekele Gagie and Serkaalem Kebede, all members of the ETA Addis Ababa branch; the arrest and detention on 9 November 2005 of Ms Mulunesh Ababayehu Teklewold, member of the ETA, and her release on 9 June 2006 without explanation; the arrest on 23 September 2006 of Mr Wasihum Melese, an elected officer of the ETA National Board, and his detention for 14 days; the disappearance of Mr Tilahun Ayalew, chairperson of the ETA Awi zone, following his arrest by security agents on 28 May 2007.*

686. *The Committee further notes the information provided by the complainants on the detention of Mr Kassahun Kebede, chairperson of the ETA Addis Ababa branch, since 1 November 2005. Charges filed against Mr Kebede and other civil society leaders and senior leaders of the opposition party include treason, outrages against the Constitution, armed conspiracy or attempted genocide. Nearly all the charges can carry death sentences. Mr Kebede and all defendants had been moved to the Kality Central Prison, where their conditions of detention were reported to be very difficult.*

687. *The Committee is deeply concerned about the information provided on the successive arrests, detentions and alleged torture of Messrs Anteneh Getnet and Meqcha Mengistu to*

make them confess their membership in the Ethiopian Patriotic Front, an illegal organization, and the complainants' fear that ETA members arrested might be submitted yet again to ill-treatment. According to the most recent communication from the complainants, Messrs Getnet and Mengistu were once again arrested on 30 May 2007 on the grounds of "involvement in criminal activities and acting as a member of the Ethiopian Patriotic Front".

688. *The Committee takes due note of the Government's statement, according to which the arrest of these ETA members does not relate to their trade union membership, nor have they been submitted to ill-treatment during their detention. In particular, the Government indicated that Messrs Kasshun Kebede, Wasihun Melese and Anteneh Getnet were arrested on grounds of their direct involvement in violent demonstrations after the May 2005 elections and their statements to incite others to be involved in the violence. They were charged with crimes of treason, disrupting the constitutional order and attempted genocide and were being tried on the criminal bench of the Federal High Court since May 2006. Their conditions of detention have been respectful of those guaranteed under the Constitution and visits by their families, lawyers and international institutions have been assured.*

689. *The Committee further notes that, in its decision of April 2007 in the case of outrages against the constitutional order of the State, the Federal High Court ruled that Mr Kassahun Kebede was to be released without charge, as the defendant had no case to answer.*

690. *While welcoming the release of Mr Kassahun Kebede, the Committee must deplore the extreme seriousness of the allegation regarding arrests, detentions and disappearance of ETA members. In particular, it must express its deep concern that Mr Kebede was detained for over one-and-a-half years only to be released by virtue of a court ruling that there was no case to answer. The Committee further notes with regret that the Government only replies to the allegations relating to the arrest of Messrs Kassahun Kebede, Wasihun Melese and Anteneh Getnet. The Committee recalls that the arrest and detention of trade union members and leaders, even for reasons of internal security, may constitute serious interference with trade union rights, unless attended by appropriate judicial safeguards. Detained trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular the right to be informed of the charges brought against them, the right to have adequate time and facilities for the preparation of their defence and communicate freely with counsel of their own choosing, and a prompt trial by an impartial and independent judicial authority [see* ***Digest****, op. cit., paras 75 and 102].*

691. *The Committee strongly urges the Government to ensure that any ETA members who are still being detained are released or brought to trial without delay before an impartial and independent judicial authority, enjoying all the guarantees necessary for their defence. Furthermore, the Committee requests the Government to take the necessary measures to ensure that in future workers are not subject to harassment or detention due to trade union membership or activities. The Committee urges the Government to send its observation without delay on the allegations relating to the arrest, detention or disappearance of the following individuals: Abate Angore, Teferi Gessesse, Tesfaye Yirga, Tamirat Testfaye, Dibaba Ouma, Ocha Wolelo, Bekele Gagie, Serkaalem Kebede, Mulunesh Ababayehu Teklewold and Tilahun Ayalew, as well as the list of 68 arrested teachers provided by the complainants (see the annex). The Committee asks the Government to keep it informed of any decisions handed down by the courts in respect of these ETA members and to take steps to ensure the immediate release of any of these members and union leaders that may still be detained for their trade union activities and membership and to take steps for the payment of adequate compensation for any damage suffered.*

692. *In view of the seriousness of the allegations concerning the torture of Messrs Getnet and Mengistu during their detention to make them confess their membership in an illegal organization, the long period of detention, the vague nature of the charges, their release on several occasions without any explanation as to the reasons for their detention only to be rearrested, the Committee urges the Government to initiate without delay an independent inquiry, to be led by a person that has the confidence of all the parties concerned, to fully clarify the circumstances surrounding their successive arrests and detentions, determine responsibility if it is found that they have been subjected to maltreatment and punish those responsible. If their detention is found to be based on anti-union grounds, the Committee requests the Government to take steps for their immediate release and for the payment of appropriate compensation for any damage suffered. The Committee requests the Government to keep it informed of the results of the inquiry.*

693. *In light of the longstanding and serious nature of the allegations and the often conflicting versions provided by the complainant organizations and the Government, and taking due note of the discussions currently under way between the Government and the Office to determine the modalities for a direct contacts mission as requested by the Conference Committee on the Application of Standards in relation to Convention No. 87, the Committee firmly urges the Government to accept such a mission in the very near future and hopes that it will include an examination of all matters raised in the present complaint.*

694. *Before concluding, the Committee is bound to note that the situation of the ETA seems not to have evolved since its last examination of interference in ETA administration and activities [see 332nd Report, paras 55–61]. The Committee urges the Government to intensify its efforts to ensure that the principles of freedom of association and collective bargaining are fully respected, particularly as regards the effective recognition of the trade union rights of teachers in the public sector. The Committee calls on the Government to fully observe the right of the ETA to organize its internal administration free from interference by the public authorities and to provide a full and detailed reply in respect of the numerous and serious allegations raised in this case of repeated government interference and harassment, arrest, detention and torture of ETA members for over a decade.*

The Committee's recommendations

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

(a) The Committee calls on the Government to fully observe the right of the ETA to organize its internal administration free from interference by the public authorities and to provide a full and detailed reply in respect of the numerous and serious allegations raised in this case of repeated government interference and harassment, arrest, detention and torture of ETA members for over a decade.

(b) The Committee urges the Government to take the necessary measures as a matter of urgency to ensure observance of the right to freedom of association of civil servants, including teachers in the public sector in accordance with Convention No. 87 ratified by Ethiopia. The Committee requests the Government to keep it informed on any progress made in this respect.

(c) With regard to the allegations relating to interference in ETA activities and confiscation of its materials and documents, the Committee observes that the Government has not provided its observations on these very serious allegations of trade union rights infringement and requests it to do so without delay so that it may examine this question in full knowledge of the facts. In the meantime, it requests the Government to ensure respect for trade union rights and to return any confiscated material that may have been seized without an appropriate warrant or that has no relation to any outstanding charges.

(d) The Committee requests the Government to initiate a full and independent investigation into all of the allegations made in this case and in the earlier Case No. 1888 relating to the steps taken by the Government to support the rival ETA group and undermine the complainant organization and to provide full details on the progress made in this regard and on the conclusions reached. In the meantime, the Committee urges the Government to ensure that the ETA may carry out its activities without any government repression. The Committee further requests the Government to provide information on any measure or action taken following the ruling of 21 June 2007 by the Federal High Court.

(e) The Committee strongly urges the Government to ensure that ETA members who are still being detained are released or brought to trial without delay before an impartial and independent judicial authority, enjoying all the guarantees necessary for their defence. Furthermore, the Committee requests the Government to take the necessary measures to ensure that in future workers are not subject to harassment or detention due to trade union membership or activities. The Committee urges the Government to send its observation without delay on the allegations relating to the arrest, detention or disappearance of the following individuals: Abate Angore, Teferi Gessesse, Tesfaye Yirga, Tamirat Testfaye, Dibaba Ouma, Ocha Wolelo, Bekele Gagie, Serkaalem Kebede, Mulunesh Ababayehu Teklewold and Tilahun Ayalew, as well as the list of 68 arrested teachers provided by the complainants (see the annex). The Committee asks the Government to keep it informed of any decisions handed down by the courts in respect of these ETA members and to take steps to ensure the immediate release of any of these members and union leaders that may still be detained for their trade union activities and membership and to take steps for the payment of adequate compensation for any damage suffered.

(f) In view of the seriousness of the allegations concerning the torture of Messrs Getnet and Mengistu during their detention to make them confess their membership in an illegal organization, the long period of detention, the vague nature of the charges, their release on several occasions without any explanation as to the reasons for their detention only to be rearrested, the Committee urges the Government to initiate without delay an independent inquiry, to be led by a person that has the confidence of all the parties concerned, to fully clarify the circumstances surrounding their successive arrests and detentions, determine responsibility if it is found that they have been subjected to maltreatment and punish those responsible. If their detention is found to be based on anti-union grounds, the Committee

requests the Government to take steps for their immediate release and for the payment of appropriate compensation for any damage suffered. The Committee requests the Government to keep it informed of the results of the inquiry.

(g) The Committee firmly urges the Government to accept the direct contacts mission requested by the Conference Committee on the Application of Standards in the very near future and hopes that it will include an examination of all matters raised in the present complaint.

Annex

ETA list of 68 arrested teachers

(List dated 29 December 2005)

No.	Name	Sex	Address	Date	Place of detention
1	Kassahun Kebede	M	Addis Ababa	01.11.05	Maekelawi, Addis Ababa
2	Mazengia Taddesse	M	Addis Ababa	09.11.05	Zuwai
3	Tesera Asmare	M	Debre Markos	31.10.05	Birr Sheleko
4	Eneyewe Alemayehu	M	Markos	31.10.05	Birr Sheleko
5	Temesgen Erigetu	M	Debre Markos	31.10.05	Birr Sheleko
6	Menberu Kebede	M	Debre Markos	07.11.05	Birr Sheleko
7	Agar Adane	M	Debre Markos	07.11.05	Birr Sheleko
8	Meketa Mengistu*	M	Dejen	01.11.05	Dangilla
9	Belete Gebre	M	Woldia		Woldia
10	Tilahun Ayalew*	M	Dangla	30.10.05	Woldia
11	Berihum Bekele	M	Metekele		Chagne
12	Wondimu Lemech	M	Metekel		Chagne
13	Fantahun Bezuayehu	M	Metekel		Chagne
14	Awoke Mekoria	M	Metekel		Chagne
15	Ayenew Fanta	M	Metekel		Chagne
16	Abreham Belai	M	Finote Sellam		Finote Sellam
17	Melku Bayabil	M	Finote Sellam		Finote Sellam
18	Yeshiwas Tekle	M	Finote Sellam		Finote Sellam
19	Desalegn Abera	M	Finote Sellam		Finote Sellam
20	Degu Mulat	M	Merawi		Merawi
21	Sileshi Dagne	M	Merawi		Merawi
22	Ferede Wole	M	Merawi		Merawi
23	Debasu Gedame	M	Merawi	14.11.05	Merawi
24	Mehamed Indiris	M	Merawi	14.11.05	Merawi
25	Seifu Degu		Dessie	14.11.05	Jara
26	Wole Admed	M	Dessie	14.11.05	Jara
27	Bizu Mekonnen	M	Dessie	14.11.05	Jara

No.	Name	Sex	Address	Date	Place of detention
28	Chane Reta	M	Dessie	14.11.05	Jara
29	Yehualaeshet	M	Dessie	14.11.05	Jara
30	Tilahun Shiferaw	M	Dessie	14.11.05	Jara
31	Tatek	M	Dessie	14.11.05	Jara
32	Berhane Berihun		Woldia	14.11.05	Woldia
33	Fentahu Bayou	M	Woldia	14.11.05	Woldia
34	Amare Keteme	M	Woldia	14.11.05	Woldia
35	Adane Tilahun	M	Woldia	14.11.05	Woldia
36	Fekadu Taye	M	Addis Ababa	04.11.05	Unknown
37	Moges Zewale	M	Gonder	06.11.05	Unknown
38	Yehualaeshet Molla	M	Dessie	03.11.05	Unknown
39	Yehualaeshet Ketsela	M	Enarj Enawga	02.11.05	Unknown
40	Fiseha Zewdu	M	Yirga Chefe	11.11.05	Unknown
41	Yilekal Bitew	M	Bahir Dar	14.11.05	Unknown
42	Mersa Berhane	M	Bahir Dar	13.11.05	Unknown
43	Asres Alem	M	Bahir Dar	14.11.05	Unknown
44	Abreham Meket	M	Bahir Dar		Unknown
45	Asmama Asere	M	Merawi	13.11.05	Unknown
46	Ketemaw Sintayehu	M	Bahir Dar	14.11.05	Unknown
47	Mulunesh Ababayehu	F	Addis Ababa	09.11.05	Zuwai
48	Tigabu Habte	M	Gonder	05.11.05	Unknown
49	Birhan Ayichew	M	Gonder	05.11.05	Unknown
50	Dejene Asfaw	M	Gonder	07.11.05	Unknown
51	Bethlehem Terefe	F	Addis Ababa	02.11.05	Released
52	Solomon Mesfin	M	Jima	05.11.05	Released
53	Getahun Tefera	M	Arba Minch	07.11.05	Released
54	Wondimu Getachew	M	Arba Minch	07.11.05	Released
55	Taddesse Melaku	M	Arba Minch	07.11.05	Released
56	Abebe Folla	M	Wolaita Sodo	07.11.05	Released
57	Tekele Loreto	M	Wolaita Sodo	07.11.05	Released
58	Markos Keba	M	Wolaita Sodo	07.11.05	Released
59	Mulugeta Tirfo	M	Wolaita Sodo	07.11.05	Released
60	Kiya Mulugeta	F	Addis Ababa	06.11.05	Released
61	Asnake Jemaneh*	M	Wolaita Sodo	02.11.05	Released on 11.11.05
62	Girma Wondimu	M	Bonga	01.11.05	Released
63	Mulugeta Fentaw	M	Dessie	Unknown	Unknown
64	Berhanu	M	Shaka	Unknown	Released
65	Abera Tamirat	M	Wolaita Sodo	Unknown	Released
66	Shitaye (wife of previous)	F	Wolaita Sodo	Unknown	Released
67	Berhanu Belai	M	Finote Sellam	Unknown	Released

No.	Name	Sex	Address	Date	Place of detention
68	Ferede Wole	M	Merawi	Unknown	Unknown

* ETA officials:
– Meketa Mengistu is the chairperson of the ETA Dejen Woreda branch, Dejen;
– Asnake Jemaneh is the chairperson of the ETA Wolaita zone branch, Wolaita Sodo;
– Tilahun Ayalew is the chairperson of the ETA Awi zone branch, Dangla.

CASE NO. 2203

INTERIM REPORT

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

Allegations: Assaults, death threats and acts of intimidation against trade unionists in a number of enterprises and public institutions; destruction of the headquarters of the trade union at the General Property Registry; raiding and ransacking of the headquarters of the trade union at the company Industrias Acrílicas de Centro América SA (ACRILASA) and burning of documents; surveillance of the UNSITRAGUA headquarters; anti-union dismissals; violation of the collective agreement on working conditions; refusal to bargain collectively; pressure on workers to leave their union; and the employers' refusal to comply with judicial orders for the reinstatement of trade union members. The enterprises and institutions concerned are: Industrial Santa Cecilia, ACRILASA, Municipality of El Tumbador, La Torre Estate, Ministry of Public Health, Chevron-Texaco and the Supreme Electoral Tribunal

696. The Committee last examined this case at its May–June 2006 meeting and submitted an interim report to the Governing Body [see 342nd Report, paras 499–517, approved by the Governing Body at its 296th Session]. The Government sent additional observations in communications dated 21 September and 26 October 2006 and 30 April and 31 October 2007.

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

A. Previous examination of the case

698. At its May–June 2006 meeting, the Committee made the following provisional recommendations relating to the allegations presented by the complainant organization [see 342nd Report, para. 517]:

(a) In general terms, the Committee requests the Government to take the necessary steps to send its observations on all the pending allegations without delay.

(b) With regard to the allegations concerning assaults, death threats and acts of intimidation against trade unionists as well as attacks on union headquarters, the Committee deeply regrets the lack of Government observations and again requests the Government to refer these cases to the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this regard.

(c) With regard to the allegations concerning employer interference in union elections at the General Property Registry, which has been confirmed by the Labour Inspectorate, the Committee requests the Government to take the necessary measures to sanction the entity responsible and to ensure that similar acts do not occur in future. The Committee requests the Government to keep it informed in this regard.

(d) With regard to the allegations concerning Industrias Acrílicas de Centroamérica, the Committee again requests the Government to send without delay any judicial decisions that are handed down on the dismissal of trade unionists, including the members of the executive committee, and on the violation of the collective agreement, as well as its observations on the allegations of pressure on union leaders and members to resign from their jobs or from the union.

(e) The Committee notes that the judicial authority ordered the reinstatement of trade union officials Bartolón Martinez and Castillo Barrios (municipality of El Tumbador) but that the mayor of the municipality lodged an appeal and then requested a partial nullification of the proceedings on the grounds of procedural errors which was accepted by the judicial authority. The Committee requests the Government to keep it informed of developments in the proceedings remaining before the judicial authority.

(f) With regard to the allegation concerning the dismissal of union leader Fletcher Alburez by the Ministry of Public Health in April 2001, the Committee reminds the complainant organization that Mr. Alburez is entitled to submit an ordinary appeal to the judicial authority and requests the Government to provide information as to whether such an appeal has been lodged.

(g) With regard to the allegations concerning the alleged unilateral imposition by the Supreme Electoral Tribunal of an organization manual (dealing with matters related to employees' duties, posts and salary levels) and acts of anti-union discrimination in the application of the said manual, as well as the Tribunal's refusal to meet union leaders and negotiate a collective agreement, for which purpose the Government had been requested to meet the parties in order to find a solution to the problems that have arisen, the Committee again requests the Government to send its observations on the matter without delay.

B. The Government's reply

699. In its communications of 21 September and 26 October 2006 and 30 April and 31 October 2007, the Government provided the following observations.

700. With regard to the allegation concerning the dismissal of trade union official Fletcher Alburez, the Government indicates that it responded to this allegation in the observations it sent in October 2005.

701. With regard to the allegations concerning employer interference in union elections at the General Property Registry, which was confirmed by the Labour Inspectorate, the

Government reports that, following an investigation into the matter and consultations with the trade unions at the workplace, it was not possible to confirm that acts of interference had been committed. The Government has enclosed the report of a labour inspection which, on the basis of the information provided, must have been conducted in 2006 (no exact date is given).

702. With regard to the allegations concerning the Municipality of El Tumbador relating to the pressure on union members to leave their union and on union officials not to continue with the reinstatement processes ordered by the judicial authority, the dismissal of union officials César Augusto León Reyes, José Marcos Cabrera, Víctor Hugo López Martínez, Cornelio Cipriano Salic Orozco, Romeo Rafael Bartolón Martínez and César Adolfo Castillo Barrios and the request for measures to ensure that all wages owed to union leader Mr Gramajo are paid without delay, the Government indicates that it requested the First Court of Labour and Social Welfare of the Municipality of Malacatán, in the department of San Marcos, to provide information on the collective dispute and that, according to the Court, although it had issued an order to reinstate Byron Clodomiro Gramajo, he had not yet been reinstated and therefore the reinstatement proceedings were still under way. Finally, with regard to the unilateral introduction by the Supreme Electoral Tribunal of an organization manual, the Government refers to the state of the appeals and preliminary issues related to the manual in question.

C. The Committee's conclusions

703. *The Committee takes note of the Government's observations. The Committee regrets, however, that once again the Government has not responded to some of the recommendations that remain pending. The Committee reminds the Government that it is important for its own reputation to formulate detailed replies to the allegations brought by complainant organizations, so as to allow the Committee to undertake an objective examination [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 24]. In these circumstances, the Committee once again urges the Government to take the necessary measures to send its observations on all the pending allegations without delay.*

704. *With regard to subparagraph (b) of the Committee's previous recommendations, which refer to allegations of assaults, death threats and acts of intimidation against trade unionists as well as attacks on union headquarters, the Committee deeply regrets that, despite the seriousness of the matter, the Government once again has not sent its observations, and strongly requests the Government to refer these cases as a matter of urgency to the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this regard.*

705. *With regard to subparagraph (c) of the recommendations relating to employer interference in union elections at the General Property Registry, which was confirmed by the Labour Inspectorate, the Committee notes that, according to the Government, further to an investigation into the matter and consultations with the trade unions at the workplace, it had not been possible to confirm that acts of interference had been committed. The Committee notes that the Government has enclosed the report of a labour inspection which, on the basis of the information provided, must have been conducted in 2006 (no exact date is given). In this regard, the Committee recalls that, in the allegations it presented in 2002, UNSITRAGUA referred to acts of interference (the distribution of ballot papers for the election of union executives and measures to prevent the union's new executive board from taking up its duties) and to the destruction of the headquarters of the trade union in the workplace. For its part, in its observations dated 27 September and 30 December 2002, the Government reported that the General Labour Inspectorate had received 16 complaints and that, after analysing the complaints and concluding that there*

had been a violation of labour rights, labour inspectors had given evidence of those violations [see 330th Report, para. 804]. The Committee recalls that, although it had called at that time for the necessary measures to sanction the entity responsible and to ensure that similar acts did not occur in future, since then the Government has not reported on the effective application of those measures. In this regard, while it takes note of the 2006 findings, bearing in mind that the interference was actually confirmed by the Labour Inspectorate in 2002, the Committee again reiterates its previous recommendation and requests the Government to take without delay the necessary measures to sanction the entity responsible for the acts confirmed by the Labour Inspectorate, to provide for adequate compensation for the damages suffered and to ensure that similar acts do not occur in future. The Committee requests the Government to keep it informed in this regard.

706. *With regard to subparagraph (d) of the recommendations concerning the dismissal of trade unionists at the company Industrias Acrílicas de Centroamérica SA and the violation of the collective agreement, the Committee recalls that, during its previous examination of the case, it requested the Government to send without delay any judicial decisions handed down on the dismissal of trade unionists and on the violation of the collective agreement and its observations on the allegations of pressure on union leaders and members to resign from their jobs or from the union. The Committee notes with regret that the Government has not sent any observations in this respect. The Committee reiterates how important it is to conclude judicial proceedings as swiftly as possible, as justice delayed is justice denied, and again urges the Government to send the judicial decisions in question and its observations on the pressure on union leaders and members to resign from their jobs or from the union.*

707. *With regard to the allegations relating to the Municipality of El Tumbador concerning the reinstatement proceedings ordered by the judicial authority, the dismissal of union officials César Augusto León Reyes, José Marcos Cabrera, Víctor Hugo López Martínez, Cornelio Cipriano Salic Orozco, Romeo Rafael Bartolón Martínez and César Adolfo Castillo Barrios and the request for measures to ensure that all wages owed to union leader Mr Gramajo are paid without delay, the Committee took note during its previous examination of the case that the judicial authority had declared partially null the proceedings carried out until that time concerning Mr Martínez and Mr Barrios and asked to be kept informed of developments in the proceedings resulting from the declaration of partial nullity. The Committee regrets that the Government has not provided information in this regard other than information relating to the reinstatement of Mr Gramajo supplied by a court in the Municipality of Malacatón which, in the Committee's understanding, refers to issues other than those dealt with in the present case (it refers to different municipalities and to the reinstatement of the worker in lieu of payment of outstanding wages). The Committee therefore requests the Government to send information without delay on the proceedings still pending and to take the necessary measures to ensure that all wages owed to Mr Gramajo are paid without delay.*

708. *With regard to the allegation concerning the dismissal of union leader Fletcher Alburez by the Ministry of Public Health in April 2001, in respect of which the Committee had requested the Government to indicate whether Mr Alburez had exercised his right to submit an ordinary appeal to the judicial authority, the Committee notes the Government's statement to the effect that it sent its reply in October 2005. Nevertheless, the Committee notes that, in its reply, the Government reported that Mr Alburez had submitted an application for protection of constitutional rights* (amparo), *which was rejected, but did not indicate whether he had initiated ordinary reinstatement proceedings. In these circumstances, and in the absence of additional information from the Government, the Committee requests the complainant organization to indicate whether Mr Alburez actually initiated ordinary reinstatement proceedings.*

709. *With regard to the alleged unilateral imposition by the Supreme Electoral Tribunal of an organization manual (dealing with matters related to employees' duties, posts and salary levels) and acts of anti-union discrimination in the application of the said manual, as well as the Tribunal's refusal to meet union leaders and negotiate a collective agreement, the Committee while taking note of the Government's indications on the status of the appeals and preliminary issues related to the manual in question, recalls that it requested the Government to meet the parties in order to find a solution to the problems that had arisen and to send its observations on the matter. The Committee requests the Government to send the requested information without delay.*

The Committee's recommendations

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

(a) The Committee once again urges the Government to take the necessary steps to send its observations on all the pending allegations without delay.

(b) With regard to the allegations concerning assaults, death threats and acts of intimidation against trade unionists, as well as attacks on union headquarters, the Committee deeply regrets that, despite the seriousness of the matter, the Government has not sent its observations, and strongly requests the Government to refer these cases as a matter of urgency to the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this regard.

(c) With regard to the allegations concerning employer interference in union elections at the General Property Registry, which was confirmed by the Labour Inspectorate, the Committee requests the Government to take the necessary measures without delay to sanction the entity responsible to provide for adequate compensation for the damages suffered and to ensure that similar acts do not occur in future. The Committee requests the Government to keep it informed in this regard.

(d) With regard to the allegations concerning the dismissal of trade unionists at the company Industrias Acrílicas de Centroamérica SA and the violation of the collective agreement, the Committee once again urges the Government to send without delay any judicial decisions that are handed down on the dismissal of trade unionists, including the members of the executive committee, and on the violation of the collective agreement, as well as its observations on the allegations of pressure on union leaders and members to resign from their jobs or from the union.

(e) With regard to the allegations relating to the Municipality of El Tumbador concerning the reinstatement proceedings ordered by the judicial authority, the dismissal of union officials César Augusto León Reyes, José Marcos Cabrera, Víctor Hugo López Martínez, Cornelio Cipriano Salic Orozco, Romeo Rafael Bartolón Martínez and César Adolfo Castillo Barrios, and the request for measures to ensure that all wages owed to union leader Mr Gramajo are paid without delay, the Committee requests the Government to send information without delay on the proceedings still pending and to

take the necessary measures to ensure that all wages owed to Mr Gramajo are paid without delay.

(f) With regard to the allegation concerning the dismissal of union leader Fletcher Alburez by the Ministry of Public Health in April 2001, the Committee requests the complainant organization to indicate whether Mr Alburez actually initiated ordinary reinstatement proceedings.

(g) With regard to the alleged unilateral imposition by the Supreme Electoral Tribunal of an organization manual (dealing with matters related to employees' duties, posts and salary levels) and acts of anti-union discrimination in the application of the said manual, as well as the Tribunal's refusal to meet union leaders and negotiate a collective agreement, the Committee once again requests the Government to meet the parties in order to find a solution to the problems that have arisen and to send its observations on the matter.

CASE NO. 2295

INTERIM REPORT

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

Allegations: The complainant organization's allegations concern the illegality of the composition of the Tripartite Committee on International Labour Affairs, failure to comply with orders for the reinstatement of dismissed trade unionists and anti-union dismissals

711. The Committee last examined this case at its June 2006 meeting and submitted an interim report to the Governing Body [see 342nd Report, paras 518–538]. The Government sent its observations in communications dated 14 August and 29 December 2006 and 30 May 2007.

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

A. Previous examination of the case

713. At its June 2006 meeting, the Committee made the following interim recommendations regarding the allegations presented by the complainant organization [see 342nd Report, para. 538]:

– The Committee requests the Government and UNSITRAGUA to explain the difference in the rights of titular and deputy members of the Tripartite Committee. The Committee also requests UNSITRAGUA to explain the reasons for which it did not attend the meeting of the Tripartite Committee;

– Regarding the alleged illegality of the composition of the Tripartite Committee on International Labour Affairs, the Committee requests the Government to indicate the method employed to determine that the Trade Unions' and People's Action Unit (UASP) is the most representative, to explain why the organization is listed in the civil registry and not in the public registry of trade unions, like other trade union organizations in the country, and to outline the trade union functions and activities carried out by the association;

– Regarding the dismissal of four workers from the Quetzal Harbour Company, the Committee requests the complainant organization to provide the names of the dismissed workers and to inform it of the circumstances under which they were dismissed;

– Regarding the alleged non-compliance with judicial orders for the reinstatement of 29 workers belonging to the Workers' Trade Union of Golan SA, the Committee requests the Government to take the necessary measures to ensure that the company reinstates the dismissed workers immediately, in accordance with the judicial orders, and to keep it informed of developments in the matter;

– Regarding the dismissal of 50 workers, recruited on an occasional basis for the sugar cane harvest, from the Palo Gordo Agricultural, Industrial and Refining Company SA, the Committee requests the Government once again to inform it whether the dismissed workers initiated court proceedings and of the outcome of any such proceedings.

B. The Government's replies

714. In its communication of 14 August 2006, the Government indicates with regard to the difference in the rights of titular and deputy members of the Tripartite Committee that, in accordance with the government agreement on the establishment and membership of the Committee, neither titular nor deputy Committee members receive preferential treatment and all members enjoy the same rights at Committee meetings. As for the method employed to determine which trade union organization is the most representative for the purposes of entitlement to membership of the Tripartite Committee, this was based on the bona fide judgement of the Ministry, which invited all types of organizations in the country capable of rallying broad public support. As for the mechanism employed to determine the Committee's composition, official letters were sent to trade union federations, confederations and central trade union organizations, inviting them to make proposals regarding the Committee's membership. On the basis of the responses received, the Ministry selected the members of the Committee impartially and in good faith, taking into account the need for continuity in the work already undertaken and for the integration of new members who would provide constructive input and proposals to facilitate the discussion and resolution of issues at the different meetings of the Tripartite Committee.

715. In its communication of 29 December 2006, the Government reports that it sent a list of the new members of the Tripartite Committee on International Labour Affairs, indicating that the Trade Unions' and People's Action Unit (UASP) was no longer a member of the Committee. It adds that the UASP was duly invited to join the Committee but showed no interest at all in doing so, and was therefore not considered as a member. The Government points out that, as can be noted in the membership agreement, UNSITRAGUA is once again a member of the Tripartite Committee on International Labour Affairs and that, as of 19 October 2006, the UNSITRAGUA representative has been attending and actively participating at every meeting.

716. Lastly, in its communication of 30 May 2007, the Government, referring to the allegations that the company Golan Group SA dismissed the 29 workers as soon as it found out about the formation of the trade union, states that the Justice of the Peace of the municipality of Villa Canales in the department of Guatemala reported that a public hearing has yet to be held in this case because of the difficulties of getting trade unionists to appear in court. The Government indicates that three of the unionists were found to be in contempt of court and

formally summoned to appear at a public hearing scheduled for 7 May 2007; a report on the outcome of the hearing is still pending.

C. The Committee's conclusions

717. *The Committee observes that the allegations that are still pending in the present case refer to the difference in the rights of titular and deputy members of the Tripartite Committee on International Labour Affairs; the illegality of the composition of the Tripartite Committee on International Labour Affairs; the dismissal of four workers from the Quetzal Harbour Company; non-compliance with judicial orders for the reinstatement of 29 workers belonging to the Workers' Trade Union of Golan SA; and the dismissal of 50 workers from the Palo Gordo Agricultural, Industrial and Refining Company SA, who had been recruited on an occasional basis for the sugar cane harvest.*

718. *Regarding the difference in the rights of titular and deputy members of the Tripartite Committee on International Labour Affairs, the Committee notes the Government's information according to which, in accordance with the provisions of the government agreement on the establishment and membership of the Committee in question, neither titular nor deputy Committee members receive preferential treatment and all members enjoy the same rights. Furthermore, the Committee observes that UNSITRAGUA has not provided information explaining why it did not attend the Committee's meeting.*

719. *As regards the alleged illegality of the composition of the Tripartite Committee on International Labour Affairs, the Committee had, at its June 2006 meeting, requested the Government to indicate the method employed to establish that the UASP is the most representative organization, to explain why the organization is listed in the civil registry, rather than the public registry of trade unions, as the country's other trade union organizations are, and to outline the trade union functions and activities carried out by the association. In this regard, the Committee notes that according to the Government, the UASP is no longer a member of the Committee, that, as of 19 October 2006, UNSITRAGUA is once again a member, and that its representative attends and actively participates at every meeting.*

720. *With regard to the alleged dismissal of four workers from the Quetzal Harbour Company, the Committee recalls that it had requested the complainant organization to provide the names of the dismissed workers and to inform it of the circumstances under which they were dismissed. In view of the fact that the complainant organization has not communicated the requested information, the Committee will not pursue its examination of these allegations.*

721. *With regard to the non-compliance with judicial orders for the reinstatement of 29 workers belonging to the Workers' Trade Union of Golan SA, the Committee had requested the Government to take the necessary measures to ensure that the company would reinstate the dismissed workers immediately, in accordance with the judicial rulings, and to keep it informed of developments in the matter. In this regard, the Committee notes that according to the Government: (1) the Justice of the Peace of the municipality of Villa Canales in the department of Guatemala reported that a public hearing has yet to be held in this case because of the difficulties encountered in getting trade unionists to attend court; and (2) three of the unionists were as a result of this found to be in contempt of court and summoned to appear at a public hearing scheduled for 7 May 2007; a report on the outcome of the hearing is still pending. The Committee expects that the workers in question will be reinstated in the very near future, in accordance with the judicial rulings to that effect. The Committee requests the Government to keep it informed in this respect.*

722. *Lastly, regarding the dismissal of 50 workers recruited on an occasional basis for the sugar cane harvest, from the Palo Gordo Agricultural, Industrial and Refining Company SA, the Committee had requested the Government to inform it whether the dismissed workers initiated court proceedings and of the outcome of any such proceedings. The Committee regrets that the Government has not communicated its observations in this regard and urges it to send them without delay.*

D. The Committee's recommendations

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

(a) The Committee expects that the 29 workers belonging to the Workers' Trade Union of Golan SA who were dismissed will be reinstated in the very near future, in accordance with the judicial rulings to that effect. The Committee requests the Government to keep it informed in this respect.

(b) Regarding the alleged dismissal of 50 workers, recruited on an occasional basis for the sugar cane harvest, from the Palo Gordo Agricultural, Industrial and Refining Company SA, the Committee urges the Government to inform it without delay whether the dismissed workers initiated court proceedings, and to inform it of the outcome of any such proceedings.

CASE NO. 2361

INTERIM REPORT

Complaints against the Government of Guatemala
presented by
— the Union of Workers of the Chinautla Municipal Authority (SITRAMUNICH)
— the National Federation of Trade Unions of State Employees of Guatemala (FENASTEG)
— the Union of Workers of the Directorate General for Migration (STDGM) and
— the Union of Workers of the National Civil Service Office (SONSEC)

Allegations: The mayor of Chinautla refused to negotiate a collective agreement and dismissed 14 union members and two union leaders; the Government is promoting a new Civil Service Act containing provisions contrary to ratified ILO Conventions on freedom of association; departments in the Ministry of Education are being reorganized with the possible elimination of posts with the aim of destroying the union that operates in that Ministry; the Directorate General for Migration refused to negotiate the collective agreement and to reinstate union leader Mr Pablo Cush with payment of lost wages and is taking measures to dismiss union

leader Mr Jaime Reyes Gonda without court authorization; the Directorate General for Migration refused to set up the joint committee provided for in the collective agreement; 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material were dismissed as a result of a reorganization ordered by the Minister of Education and action is being taken to dismiss all members of the union's executive committee; the National Civil Service Office (ONSEC) has hindered the process of collective bargaining, violated the collective agreement in force and carried out acts of discrimination against a trade union official

724. The Committee last examined this case at its November 2006 meeting [see 343rd Report, paras 824–835] and submitted an interim report to the Governing Body.

725. The National Federation of Trade Unions of State Employees of Guatemala (FENASTEG) sent additional information in a communication dated 27 November 2006. The Union of Workers of the National Civil Service Office (SONSEC) presented new allegations in a communication dated 29 November 2006. The Government sent partial observations in communications of 5, 8, 21 and 24 November 2006 and 9 January, 22 March, 14 May, and 1 and 7 June 2007.

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

A. Previous examination of the case

727. At its November 2006 meeting, the Committee made the following recommendations [see 343rd Report, para. 835]:

(a) As regards the socio-economic dispute at the Chinautla Town Hall that is before the judicial authority, the Committee once again requests the Government to inform it of any decisions handed down by the conciliation and arbitration court regarding the 14 dismissed union members (who, according to the Government, were still working at that time) and union leader Marlon Vinicio Avalos.

(b) The Committee once again requests the Government to take measures to promote collective bargaining in Chinautla Town Hall and to supply information in this regard.

(c) The Committee once again requests the Government to ensure that the civil service bill that emerges from the consultation process is fully compatible with Conventions Nos 87 and 98 and to send a copy of the bill so that the Committee can assess its compatibility with the principles of freedom of association.

(d) As regards the alleged process of reorganization of the departments of the Ministry of Education with the possible elimination of posts with the aim of destroying the union that operates there, the Committee notes the information from the Government to the effect that the executive committee of the Trade Union of Workers of the Department of Education of Guatemala (SITRADDEG) has brought an action before the judicial authority against the State of Guatemala, expects that the judicial authority will soon issue a ruling, and requests the Government to keep it informed of the final outcome of the proceedings.

(e) As regards the allegations concerning the dismissal of 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material as a result of an allegedly illegal reorganization, without consultation, ordered by the Ministry of Education, and the action taken to dismiss all members of the union's executive committee, the Committee, noting that FENASTEG communicated the full names of the affected workers in its communication of 3 November 2005, which were transmitted to the Government and are given at the beginning of this case, requests the Government to send its observations concerning these allegations without delay.

(f) As regards the alleged action taken by the Ministry of Education to dismiss all members of the executive committee of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material, the Committee requests the complainant organization (FENASTEG) to indicate the court dealing with this action.

(g) The Committee, deeply regretting that since the start of this case, no observations have been communicated by the Government concerning the following allegations: (1) the Directorate General for Migration refused to negotiate the collective agreement and to reinstate union leader Mr. Pablo Cush with payment of lost wages and is taking measures to dismiss union leader Mr. Jaime Reyes Gonda without court authorization; and (2) the Directorate General for Migration refused to set up the mixed (joint) committee as set out in the collective agreement, urges the Government to reply without delay.

B. Additional information provided by the complainants

728. In its communications dated 27 and 29 November 2006, the SONSEC and FENASTEG allege that the authorities of the National Civil Service Office (ONSEC) have violated the collective agreement on working conditions which governs the freedom to engage in trade union activities and which stipulates in section 14: "Freedom to engage in trade union activities. ONSEC recognizes that the members of the executive committee and the advisory council of SONSEC have the right under law to engage in trade union activities during normal working hours. Furthermore, it undertakes to enforce all the provisions and principles relating to freedom of association set forth in the Constitution of the Republic of Guatemala and other related legislation, as well as the relevant international labour Conventions ratified by the Government of Guatemala." According to SONSEC, the authorities of ONSEC have verbally requested a "detailed report on the activities of the members of the executive committee and advisory council within the trade union organization, to enable department heads to monitor the number of hours actually spent on their daily activities as part of their work for ONSEC". According to SONSEC, this constitutes a flagrant violation of current labour legislation, as the authorities are deliberately misinterpreting what is stipulated in the collective agreement on working conditions, in particular the provisions concerning trade union leave, whereas section 10 of the collective agreement in force sets out how the provisions of the agreement should be legally interpreted, stipulating that the primary authority should be the Constitution of the Republic of Guatemala and that, in the absence of a provision in the Constitution, reference should be made first to the international labour treaties and Conventions adopted and ratified by the Government of Guatemala; then to the relevant provisions of the Civil Service Act; then to the provisions of the Labour Code; and lastly to any provisions applicable to the Executive Authority. Thus, the case in question involves a violation of the provisions of article 106, paragraph 2, of the Constitution of the Republic of Guatemala, which states: "If there is any doubt regarding the interpretation or scope of legal, regulatory or contractual provisions in labour matters, the interpretation that is the most favourable to the workers shall be applied." SONSEC claims that the policy of discriminating against, harassing and monitoring SONSEC officials in the public administration is aimed at destroying the trade union.

729. SONSEC also alleges that the Government has hindered the process of collective bargaining between ONSEC and its employees. It indicates that, on 15 February 2005, a

collective dispute on working conditions, aimed at negotiating a new collective agreement, was referred to the labour courts; accordingly, the First Court of Labour and Social Welfare of the First Economic Zone issued a decision, dated 16 February 2005, assigning the case to the fourth clerk of the court and process server under Case No. 93-2005. The Second Court of Labour and Social Welfare of the First Economic Zone then issued a decision dated 18 February 2005, under which the court set up a conciliation tribunal and assigned the case to the third clerk of the court and process server under Case No. 496-2005. Although a summons has been in effect against ONSEC since 16 February 2005, the Office of the National Procurator-General, as the representative of the State of Guatemala, has used every means at its disposal to delay the collective bargaining process within ONSEC. SONSEC considers that this constitutes a violation of Convention No. 98 and of section 71 of the collective agreement on working conditions which is currently in force in ONSEC.

730. SONSEC adds that Mr Edgar René Guzmán Barrientos, Secretary-General, was a victim of anti-union discrimination as he was not paid the professional bonus due for October 2006.

731. Lastly, SONSEC alleges that the authorities of ONSEC intend to introduce internal regulations which are not compatible with the collective agreement on working conditions currently in force in ONSEC. The aim of the regulations is to restrict the workers' rights, especially with regard to leave (they are required to give three days' notice) and to define disciplinary offences which are not covered by the Civil Service Act and its implementing regulation. Furthermore, the procedures governing discipline and dismissals under the collective agreement on working conditions are not properly applied.

C. The Government's reply

732. In its communication of 8 November 2006, with regard to the allegations presented by the Union of Workers of the Directorate General for Migration (STDGM), the Government indicates that it conducted an investigation to establish the facts put forward by the complainant. Specifically, with regard to the refusal to negotiate a collective agreement on working conditions, the Directorate General for Migration supplied information indicating that at no point did it refuse to negotiate the collective agreement on working conditions with the two trade unions currently operating within the Directorate General and that, furthermore, there had been no refusal to negotiate that agreement through legal channels. With regard to the refusal to set up the joint committee, the Directorate General indicates that at no point did it refuse to set up the committee provided for in the collective agreement on working conditions. With regard to the employment status of Mr Pablo Cush and Mr Jaime Roberto Reyes Gonda, the following information has been provided: Mr Pablo Cush was reinstated in his post but was not paid the wages owed to him, in accordance with the provisions of section 76 of the Organic Budget Act, Decree No. 107-97, of the Congress of the Republic, which provides that "no personal payments shall be made that are not earned and neither shall payment be made for services not rendered". The situation of Mr Jaime Roberto Reyes Gonda is currently being clarified in the courts.

733. In its communication of 21 November 2006, in relation to the alleged dismissal of 14 members of the Union of Workers of the Chinautla Municipal Authority (SITRAMUNICH) without the legal authorization of the court dealing with the collective dispute the Government indicates that, in response to a request for information, the Fifth Court of Labour and Social Welfare provided details on the reinstatement of six of the 14 individuals mentioned in the complaint, as follows: in the case of Lourdes Elizabeth Tahuite Coche, the parties were notified of the decision of the Third Chamber of the Labour Appeals Court upholding the lower-court ruling; in the case of María Elisa Sipac López, the parties were notified of the decision of the Third Chamber of the Labour Appeals Court upholding the lower-court decision; in the case of Mayra Julieta Morales

González, although the decision was upheld by the Third Chamber of the Labour Appeals Court, the plaintiff was not reinstated because she did not appear in court in order for the necessary formalities to be carried out; in the case of Juan Carlos Maldonado Aragón, the competent justice of the peace was assigned the task of implementing the reinstatement, in accordance with the decision of the Third Chamber of the Labour Appeals Court, which upheld the lower-court decision; in the case of Luis Enrique Rivera (only one surname), although the lower-court decision was upheld by the Third Chamber of the Labour Appeals Court, the plaintiff was not reinstated because he did not appear in court in order for the necessary formalities to be carried out; and, in the case of Gregorio Mijangos Catalán, the Third Chamber of the Labour Appeals Court dismissed the reinstatement proceedings.

734. In its communication of 24 November 2006, in relation to the allegation that the Government is promoting a new Civil Service Act containing provisions contrary to ratified ILO Conventions on freedom of association, the Government reports that the civil and municipal services bills are being developed to meet a pressing need in Guatemala, it being common knowledge that the public services at both the national and municipal levels are of a low standard and that state employees lack job security, career opportunities and incentives and are consequently accused of being incompetent, lacking in transparency and slow to act. For that reason, organized civil society, through the political parties represented in Guatemala and with the technical support of the Organization of American States (OAS), has launched a series of consultations and research and fieldwork activities for the development of both civil service bills.

735. Prior to and during the administration of President Oscar Berger, when the Presidential Commission for the Reform, Modernization and Strengthening of the State and its Decentralized Bodies (COPRE) was assigned the task of following up the bill, a series of consultations was held involving different sectors of national society, at which participants were presented with the bill, given a copy of the text and invited to provide feedback in order to add to its value. The following sectors were involved: socio-economic groups (non-governmental organizations (NGOs), foundations and associations); the international sector, including bodies and foreign agencies that have carried out relevant research (the World Bank, the Inter-American Development Bank, the United States Agency for International Development, etc.); academia (universities and research institutes); the trade unions (municipal and public sector federations and trade unions); rural and urban development councils (in each of the 22 administrative departments, with the involvement of civil society and government and municipal authorities); municipal associations (the National Association of Municipalities (ANAM) and the Association of Indigenous Mayors (AGAI)); the production sector (the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)); political parties (technical advisers); state employees working for government and municipal authorities; the Government Cabinet; the tripartite committee (government, trade unions, employers); and embassies, consulates and international cooperation agencies.

736. In late 2004 and early 2005, the groups concerned with the civil service reform process were invited to participate in working parties. In particular, a public notice was issued in the press (in the *Official Journal* and in two of the largest privately owned daily newspapers), inviting municipal and public sector trade unions, who were sent electronic copies of the bills, to participate in the working parties to discuss the bills (section by section). Over 56 trade union organizations signed up and were represented in the discussions. During the process, participants provided input and added value to the bills before these were submitted to the bodies provided for by law. Then, in March 2005, final versions of the draft bills were presented to a group of human resources managers from government bodies, who were given the opportunity to review the latest version and make final comments. The workshop included contributions by ONSEC, COPRE and an NGO representing the non-governmental sector.

737. Once that stage in the procedure had been completed, the bills were submitted to three internal government filters to obtain the necessary legal opinions. First, after formal and technical discussions in which the relevant recommendations were made, the legal team of COPRE, comprising five lawyers, issued a favourable opinion. Secondly, the General Secretariat of the Office of the President, after making recommendations and introducing drafting amendments, issued an opinion in favour of forwarding the bills to the Congress of the Republic. The third filter was the Ministry of Labour, to which the President of the Republic had assigned the task of submitting the amended bills with an explanatory statement to the Congress. The bills were submitted in November 2005 as Proposals Nos 3395 and 3396 by the President of the Republic to the legislative authority and were referred to the labour, social welfare and municipal affairs committees. The draft texts had already been formally presented, together with an explanatory statement, to these legislative committees and to 40 per cent of the legislature. Each member of the Congress received a hard copy of the proposals with a note requesting support for the approval and serious discussion of the proposals.

738. The legislative proposals are aimed at modernizing the civil service by enhancing professionalism and by guaranteeing fundamental labour rights, such as the right to job security, the right to salary adjustments and post reclassification and the right to a career structure. Eleven subsystems have been developed under this legislation, with world-class human resources management and development methods that focus on the individual, i.e. the human factor, in public administration. Acquired rights are, generally speaking, respected, for example: Section 3, General principles. These include: gender equality and equity (1), fair pay (2), freedom of association (3), job security (10), protection of staff of public services and minimum labour standards (15), cultural diversity (16). Section 6, Supremacy of the Constitution and subsidiary sources of law: "In the interpretation and application of this Act, regard shall be had at all times to the supremacy of the Constitution and other subsidiary sources of law, in the following order: the international human rights treaties, specifically those relating to labour matters, which have been approved and ratified by the State of Guatemala; the Labour Code and other labour legislation; collective agreements; the general principles of law; and principles of human resources management." Section 24, Rights: "Civil servants and state employees shall enjoy the rights enshrined in the Constitution of the Republic, in the international treaties relating to labour rights approved and ratified by the State of Guatemala, in this Act and in other related laws and their regulations." Part III, Chapter II, Trade union organization. Section 69, Trade unions: "State employees of the bodies governed by this Act may form trade unions, understood to mean permanent associations of state employees, aimed at promoting the analysis, improvement and protection of their labour interests. This does not apply to members of the armed forces and security forces and civil servants representing the public administration."

739. The Government points out that the Congressional Committee on Labour recently issued an unfavourable opinion on the civil service bill, and consequently, in accordance with the general rules of procedure of the Congress of the Republic, this legislative proposal shall not be considered further. COPRE has indicated, however, that the necessary changes and amendments are being made to the original bill to incorporate the comments made by the members of Congress.

740. In its communication of 9 January 2007, the Government adds in relation to the contested bill for a new Civil Service Act that Legislative Proposal No. 3305, providing for the approval of the Civil Service Act, was submitted to the Congress of the Republic by the Executive Authority and was assigned to the congressional committees on labour, social welfare and social security. Although the Congressional Committee on Labour issued an unfavourable opinion on the civil service bill, the same legislative proposal was endorsed by the Congressional Committee on Social Welfare and Social Security.

741. The Government indicates that section 43 of the Organic Act on the Legislative Authority, Decree No. 63-94 of the Congress of the Republic stipulates that each committee may present its own opinion – whether favourable or unfavourable – to the Congress of the Republic in plenary session, which shall decide whether or not to accept the opinion. If a favourable opinion is accepted, the legislative proposal shall continue its passage; if an unfavourable opinion is accepted, the legislative proposal shall be shelved. The Government notes that COPRE, the body responsible for reforming the Civil Service Act, has indicated that it would welcome the recommendations and advice of the International Labour Organization (ILO) and has therefore requested the technical assistance offered by the ILO.

742. In its communication of 22 March 2007, the Government states the following in relation to the allegations presented by SONSEC:

– Monitoring the activities of the members of the trade union's executive committee and advisory council: ONSEC has displayed a cooperative and supportive attitude towards the activities of SONSEC. As acknowledged by the complainants, the members of the trade union's executive committee and advisory council voluntarily report on their activities to the department heads, voluntarily giving the reasons for their absences from the workplace. No measures have been taken to control in any way the exercise of the guaranteed and recognized rights relating to trade union organization; if such measures had been taken, documentary evidence of the relevant objections or complaints filed, if any, by the trade union should have been attached; this was not the case, because the alleged harassment did not occur. It is worth highlighting in this regard that, in accordance with the provisions of the second collective agreement on working conditions which is currently in force in ONSEC (the last two paragraphs of section 14), the members of SONSEC must seek the authorization of the director of ONSEC in order to benefit from special leave and to participate in the activities organized by the trade union.

– Hindering the collective bargaining process: ONSEC denies the accusation that it is hindering the collective bargaining process as totally false, as it was SONSEC that left the negotiating table and initiated the current summons proceedings, thereby stalling the negotiation of the agreement. If a simple comparison is drawn between the benefits provided under the current collective agreement on working conditions and those that were actually granted, it is clear that ONSEC is willing to negotiate more favourable conditions for its employees. Thus, there is a lack of consistency between the negotiation process which was under way and the complaint or accusation now being submitted by this organization with the intention of confusing the Members of the ILO and taking them by surprise. The allegations are totally inconsistent, as the issuance of a summons was agreed and decided on by the parties negotiating on behalf of the trade union, who abandoned the collective bargaining process. The Government indicates that, despite the lack of willingness on the part of SONSEC, ONSEC, in view of the situation faced by its employees as a result of the lack of understanding and the attitude adopted by this organization, has granted temporary benefits to its employees, and therefore cannot accept the accusations made against it, as it is illogical to think that freedom of association is being violated when ONSEC has granted temporary benefits in addition to those covered by the agreement, in an attempt to minimize in some way the mistakes made by this trade union organization.

– Failure to pay the professional bonus for October 2006 to the worker Edgar René Guzmán Barrientos, without the authorization of the competent court: In accordance with the applicable regulation, the State of Guatemala grants a bonus to state employees who have the status of professionals with university qualifications, on

condition that they have the relevant legal documents to prove their professional status and to prove that they are actively engaged in the profession. It is essential to provide proof of active engagement because a person can be a qualified professional without being actively engaged and, hence, in order to receive the bonus, it is necessary to provide proof of active engagement in accordance with the provisions of Government Agreement No. 327-90 of 28 February 1990 (section 3 and section 4, paragraph 2). A professional bonus is not withdrawn on the basis of participation in a particular activity (such as trade union activities) but rather payment of the bonus is conditional on the possession of academic qualifications, and this requirement applies to all professionals working for the State of Guatemala, without exception; belonging to an organization – in this case to a trade union – does not exempt an individual from this obligation. Mr Edgar René Guzmán Barrientos, just like all the other professionals working for ONSEC, was duly notified of the requirement to provide proof of his status as an active professional, and was one of only two such professionals in ONSEC who did not fulfil that requirement; consequently, he did not receive the bonus for the month for which he failed to provide proof of his status, as required by law. In this specific case, the plaintiff was duly notified in advance; furthermore, there is evidence that, on previous occasions, he complied with and was therefore aware of the obligation which was not fulfilled in the present case, in which "documents" were supplied that did not meet the legal requirements. All of this bears no relation to the trade union activity of the plaintiff, which does not exempt him from the obligation of providing proof of his status as an active professional .

– Implementation of internal regulations which are not compatible with the collective labour agreement currently in force and which affect trade union leave and other matters: In order to comply with the provisions of section 25 of the Civil Service Act, the ONSEC authority has been empowered to implement instruments to regulate the activities of the institution. In this case, a consultative process was initiated to establish regulations governing the activities of ONSEC employees. Workers and managers were invited to provide input, in order to achieve broader consensus in the implementation of the regulations. SONSEC was invited to participate in this process, as were any state employees who did not belong to the trade union but who wished to participate in the dialogue. The representatives of SONSEC did not accept the invitation and did not participate in the scheduled activities; consequently the discussion process was suspended until the participation of interested parties could be increased. It is worth noting that the document submitted by the complainants is not the same document as that which was discussed and which has now reached an impasse pending technical and legal evaluations. In sum, ONSEC reiterates that it has always respected the right to form trade unions as laid down in the Constitution of the Republic of Guatemala and in section 9 of the collective agreement on working conditions currently in force between ONSEC and SONSEC.

743. In its communication of 14 May 2007, in relation to the allegations that the Minister of Education requested a process of reorganization, in clear violation of the summons against the Department of Education of Guatemala, the Government indicates that, according to the information provided by the Second Court of Labour and Social Welfare, 25 petitions for reinstatement were filed in the 2004–06 period in connection with the socio-economic collective dispute registered under No. 2049-2002. Of the abovementioned cases, the only individuals reinstated were those who filed petitions Nos 24-2004 and 12-2005; none of the others led to reinstatement proceedings, because the individuals involved had not been employed by the Department of Education of Guatemala, against which the collective dispute complaint had been registered.

744. In its communication of 1 June 2007, in relation to the allegations presented by SONSEC, the Government reports that, according to the Civil Services Directorate, in order to avoid

further complications, it paid worker Edgar René Guzmán Barrientos the professional bonus for October 2006. In its communication of 7 June 2007, the Government indicates that it directly requested the complainant organization to provide the number of the case file or files relating to the dismissal of the members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material, because the limited information provided previously (only the names) was not enough to locate the files relating to reinstatement. As the organization in question did not respond positively to that request, claiming that it was not in its interest to provide the information, the Government requests that it be asked to supply the information, as it is crucial to the continued investigation of the case.

D. The Committee's conclusions

745. *The Committee recalls that this case refers to allegations of anti-union discrimination (primarily the dismissal of union leaders and union members), the failure to promote collective bargaining and the preparation of a civil service bill which, according to the complainants, would not be compatible with the provisions of Conventions Nos 87 and 98.*

746. *With regard to subparagraph (a) of the recommendations concerning the dismissal from the Chinautla Municipal Authority of 14 union members and union leader Mr Marlon Vinicio Avalos, the Committee notes that, according to the Government, the Fifth Court of Labour and Social Welfare reported the following: (1) in the case of Ms Lourdes Elizabeth Tahuite Coche, the parties were notified of the decision of the Third Chamber of the Labour Appeals Court upholding the lower-court ruling; (2) in the case of Ms María Elisa Sipac López, the parties were notified of the decision of the Third Chamber of the Labour Appeals Court upholding the lower-court decision; (3) in the case of Ms Mayra Julieta Morales González, although the decision was upheld by the Third Chamber of the Labour Appeals Court, the plaintiff was not reinstated because she did not appear in court in order for the necessary formalities to be carried out; (4) in the case of Mr Juan Carlos Maldonado Aragón, the competent justice of the peace was assigned the task of implementing the reinstatement, in accordance with the decision of the Third Chamber of the Labour Appeals Court, which upheld the lower-court decision; (5) in the case of Mr Luis Enrique Rivera, although the lower-court decision was upheld by the Third Chamber of the Labour Appeals Court, the plaintiff was not reinstated because he did not appear in court in order for the necessary formalities to be carried out; and (6) in the case of Mr Gregorio Mijangos Catalán, the Third Chamber of the Labour Appeals Court dismissed the reinstatement proceedings. The Committee requests the Government to keep it informed of the final outcome of the abovementioned judicial proceedings relating to the effective reinstatement of workers in their posts, and to report on the other dismissed workers, including the trade union leader, Mr Marlon Vinicio Avalos.*

747. *With regard to subparagraph (b) of the recommendations, on the need to promote collective bargaining in the Chinautla Municipal Authority, the Committee regrets that the Government has not sent its observations on this matter. In these circumstances, the Committee requests the Government to take without delay the necessary measures to promote collective bargaining in the Chinautla Municipal Authority and to keep it informed in this respect.*

748. *With regard to subparagraph (c) of the recommendations, on the contested civil service bill, the Committee notes that, according to the Government: (1) the civil and municipal services bills are being developed to meet a pressing need in Guatemala, it being common knowledge that the public services at both the national and municipal levels are of a low standard and that state employees lack job security, career opportunities and incentives and are consequently accused of being incompetent, lacking in transparency and slow to act; (2) a series of consultations were held involving various sectors (including public and*

municipal sector federations and trade unions, the tripartite committee, the production sector, etc.) in which participants were presented with the bill, given a copy of it and invited to provide feedback; (3) in late 2004 and early 2005, the groups concerned with the civil service reform process were invited to participate in working parties; in particular, a public notice was issued in the press (in the Official Journal *and in two of the largest privately owned daily newspapers), inviting municipal and public sector trade unions, who were sent electronic copies of the bills, to participate in the working parties to discuss the bills (on an article-by-article basis). Over 56 trade union organizations signed up and were represented in the discussions. During the process, participants provided contributions and input to the bills so as to improve them before these were submitted to the bodies provided for by law; (4) the bills were submitted in November 2005 as Legislative Proposals Nos 3395 and 3396 by the President of the Republic to the legislative authority and were referred to the labour, social welfare and municipal affairs committees; (5) the legislative proposals are aimed at modernizing the civil service by enhancing professionalism and by guaranteeing fundamental labour rights, such as the right to job security, the right to salary adjustments and post reclassification and the right to a career structure; acquired rights (including the right to freedom of association) are, generally speaking, respected; (6) although the Congressional Committee on Labour issued an unfavourable opinion on the civil service bill, the legislative proposal was endorsed by the Congressional Committee on Social Welfare and Social Security; (7) in accordance with current legislation, each committee may present its own opinion – whether favourable or unfavourable – to the Congress of the Republic in plenary session, which shall decide whether or not to accept the opinion. If a favourable opinion is accepted, the legislative proposal shall continue its passage; if an unfavourable opinion is accepted, the legislative proposal shall be shelved; (8) COPRE, the body responsible for reforming the Civil Service Act, is willing to accept the recommendations and advice of the ILO and has therefore requested the technical assistance offered by the ILO.*

749. *In this respect, noting that the Congress of the Republic in plenary session must decide whether to accept the unfavourable opinion of the Congressional Committee on Labour or the favourable opinion of the Congressional Committee on Social Welfare and Social Security in regard to the bill to reform the Civil Service Act, the Committee requests the Government to keep it informed of the passage of the bill and trusts that the ILO will provide the requested technical assistance.*

750. *With regard to subparagraph (d) of the recommendations relating to the allegation that departments in the Ministry of Education are being reorganized with the possible elimination of posts with the aim of destroying the union that operates within that Ministry, the Committee notes that, according to the Government, the Second Court of Labour and Social Welfare reported that 25 petitions for reinstatement were presented in the 2004–06 period in connection with the socio-economic collective dispute registered under No. 2049-2002, that two individuals were reinstated and that the others were not reinstated because they had not been employed by the Department of Education.*

751. *With regard to subparagraph (e) of the recommendations on the dismissal of 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material as a result of an allegedly illegal reorganization, without consultation, ordered by the Minister of Education, and the action taken to dismiss all members of the union's executive committee, and with regard to subparagraph (f) on the alleged action taken by the Ministry of Education to dismiss all members of the executive committee of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material, the Committee notes that, according to the Government: (1) the complainant organization was requested to provide the number of the case file or files relating to the dismissals, as it is not possible to locate the files relating to the reinstatement with only the names of those affected; and (2) the trade union*

organization indicated that it was not in its interest to provide that information. In these circumstances, the Committee requests the complainant organization, FENASTEG, to provide information on the case file numbers or on the courts which handled the relevant proceedings.

752. *With regard to subparagraph (g) of the recommendations on: (1) the refusal of the Directorate General for Migration to negotiate the collective agreement and to reinstate union leader Mr Pablo Cush with payment of lost wages and the measures being taken to dismiss union leader Mr Jaime Roberto Reyes Gonda without court authorization; and (2) the refusal of the Directorate General for Migration to set up the joint committee provided for in the collective agreement, the Committee notes that, according to the Government: (i) the Directorate General for Migration indicated that at no point did it refuse to negotiate the collective agreement on working conditions with the two trade unions currently operating within the Directorate General, that there had been no refusal to negotiate that agreement through legal channels and that neither had it refused to set up the joint committee provided for in the collective agreement on working conditions, and (ii) Mr Pablo Cush was reinstated in his post but was not paid the wages owed to him, in accordance with the provisions of the Budget Act, and the situation of Mr Jaime Roberto Reyes Gonda is currently being clarified in the courts. In this regard, the Committee requests the Government to take the necessary measures to promote collective bargaining between the Directorate General for Migration and the trade unions concerned and to keep it informed in this regard. Furthermore, with regard to the dismissal of trade union leaders Mr Pablo Cush and Mr Jaime Roberto Reyes Gonda, the Committee recalls that, in its examination of numerous cases of anti-union dismissal, it requested governments to see to it that the affected workers were reinstated in their posts without loss of pay [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 840]. In these circumstances, the Committee requests the Government to do everything in its power to ensure that Mr Cush – who has now been reinstated – receives payment of lost wages and to keep it informed of the outcome of the judicial proceedings relating to the dismissal of trade union leader Mr Jaime Roberto Reyes Gonda. If the law prohibits or prevents the payment of these wages, the Committee considers that it should be modified.*

753. *Regarding the new allegations presented by SONSEC and FENASTEG on:*

– *The violation of section 14 of the collective agreement on working conditions relating to the freedom to carry out trade union activities (recognition of the right of members of the executive committee and advisory council to engage in trade union activities during normal working hours): The Committee notes that, according to the Government: (1) ONSEC has displayed a cooperative and supportive attitude towards the activities of SONSEC; (2) the representatives of SONSEC voluntarily report on their activities to the department heads, giving the reasons for their absences; no measures have been taken to control the exercise of guaranteed rights; and (3) in accordance with the provisions of section 14 of the collective agreement on working conditions, the members of SONSEC must seek the authorization of the director of ONSEC in order to benefit from special leave and to participate in the activities organized by the trade union. In view of this information, the Committee will not pursue its consideration of these allegations.*

– *Hindering the collective bargaining process: The Committee notes that, according to the Government, it was SONSEC that left the negotiating table and initiated the current summons proceedings (for a court appearance), thus stalling the negotiation of the agreement, and that ONSEC, in view of the lack of willingness on the part of SONSEC and considering the situation facing its employees, has granted temporary benefits to its employees. In these circumstances, the Committee requests the*

Government to take measures to promote collective bargaining between ONSEC and SONSEC and to keep it informed in this regard.

– *Failure to pay the professional bonus for October 2006 to the SONSEC leader, Mr Edgar René Guzmán Barrientos: The Committee notes that, according to the Government: (1) in accordance with the applicable regulation, the State grants a bonus to state employees who are professionals with university qualifications, on condition that they provide the relevant legal documents to prove their status and are actively engaged in the profession; (2) it is necessary, without exception, to provide proof of academic status; belonging to a trade union organization does not exempt an individual from this obligation; (3) the trade union leader in question was one of two such individuals in ONSEC who did not meet the necessary requirements, and therefore did not receive the bonus in question; and (4) in order to avoid further complications, the professional bonus was finally paid. In the light of this information, the Committee will not pursue its consideration of these allegations.*

– *Implementation of internal regulations which are not compatible with the collective agreement on working conditions, in particular with regard to trade union leave: The Committee notes that, according to the Government: (1) in order to comply with the provisions of section 25 of the Civil Service Act, the ONSEC authority has been empowered to implement instruments to regulate the activities of the institution; (2) in this case, a consultative process was initiated to establish regulations governing the activities of ONSEC employees, and workers and managers were invited to provide input, in order to achieve broader consensus in the implementation of the regulations; (3) SONSEC was invited to participate in this process, as were state employees who did not belong to the trade union but who wished to participate in the dialogue; (4) the representatives of SONSEC did not accept the invitation and did not participate in the scheduled activities and consequently the discussion process was suspended until the participation of interested parties could be increased; it is important to note that the document submitted by the complainants is not the same document as the one which was discussed and which has now reached an impasse pending technical and legal evaluations. In these circumstances, the Committee expects that ONSEC will consult fully with SONSEC if it intends to adopt new internal regulations.*

The Committee's recommendations

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

(a) With regard to the dismissal of 14 trade union members and the union leader, Mr Marlon Vinicio Avalos, from the Chinautla Municipal Authority, the Committee requests the Government to keep it informed concerning the judicial proceedings under way in connection with the six workers mentioned by the Government and concerning the workers who have been effectively reinstated in their posts, and to provide information on the other dismissed workers, including the trade union leader Mr Marlon Vinicio Avalos.

(b) The Committee requests the Government to take the necessary measures to promote collective bargaining in the Chinautla Municipal Authority and to keep it informed in this respect.

(c) With regard to the civil service bill, the Committee requests the Government to keep it informed of the bill's passage through Congress, and trusts that the ILO will provide the requested technical assistance.

(d) With regard to the dismissal of 16 members of the Union of Workers of the "José de Pineda Ibarra" National Centre for Textbooks and Educational Material and the action taken by the Ministry of Education to dismiss all the members of the executive committee, the Committee requests FENASTEG to provide information on the case file numbers or on the courts which handled the relevant proceedings, so that the Government is able to send its observations.

(e) The Committee requests the Government to take measures to promote collective bargaining between the Directorate General for Migration and the trade unions concerned.

(f) With regard to the dismissal of trade union leaders Mr Pablo Cush and Mr Jaime Roberto Reyes Gonda, the Committee requests the Government to do everything in its power to ensure that Mr Pablo Cush – who according to the Government has been reinstated in his post – receives payment of lost wages and to keep it informed of the outcome of the judicial proceedings relating to the dismissal of trade union leader Mr Jaime Roberto Reyes Gonda. If the law prohibits or prevents the payment of these wages, the Committee considers that it should be modified.

(g) With regard to the new allegations presented by SONSEC and FENASTEG, the Committee: (1) requests the Government to take the necessary measures to promote collective bargaining between ONSEC and SONSEC; and (2) expects that ONSEC will consult fully with SONSEC if it intends to adopt new internal regulations. The Committee requests the Government to keep it informed in this regard.

CASE NO. 2445

INTERIM REPORT

Complaint against the Government of Guatemala presented by — the World Confederation of Labour (WCL) and — the General Confederation of Workers of Guatemala (CGTG)

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

755. The Committee examined this case at its November 2006 meeting and presented an interim report to the Governing Body [see 343rd Report of the Committee, paras 861–905,

approved by the Governing Body at its 297th Session (November 2006)]. The Government sent new observations in communications dated 22 March, 30 April, 4 May and 28 June 2007.

756. The General Confederation of Workers of Guatemala (CGTG) presented allegations in communications dated 9 April and 22 May 2007.

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

A. Previous examination of the case

758. At its November 2006 meeting, the Committee made the following recommendations on the allegations that remained pending [see 343rd Report, para. 905]:

(a) Recalling 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 respected, the Committee deplores the murder of the trade union officials Rolando Raquec and Luis Quinteros Chinchilla, the attempt against the life of the trade unionist Marcos Alvarez Tzoc and the trade union official Imelda López de Sandoval, and requests the Government to inform it urgently and without delay of the developments in the inquiries and procedures under way and expects that those responsible will be severely punished.

(b) The Committee requests the Government to take immediately all the necessary measures to safeguard the lives of the wife and children of the murdered trade unionist Rolando Raquec, from the death threats that, according to the allegations, they have received.

(c) The Committee requests the Government to take measures to ensure that an independent inquiry is carried out without delay on the allegations of death threats against the secretary-general of the Trade Union Association of Itinerant Vendors of Antigua and to inform it in this respect.

(d) The Committee requests the Government to communicate the outcome of the inquiries carried out by the National Police and the Prosecutor-General for Human Rights on the allegation concerning the selective surveillance and theft of laptop equipment belonging to José E. Pinzón, secretary-general of the CGTG.

(e) The Committee requests the Government to take appropriate steps to resolve the question of payment of wages and other benefits ordered by the judicial authority in favour of the trade unionists from the San Lázaro Estate and the Municipality of Livingston, and to promote collective bargaining between the El Carmen Estate and the trade union.

(f) The Committee requests the Government to send, without delay, detailed observations on the allegations to which it did not reply, which are listed here below:

– dismissals for attempting to establish a trade union (Municipality of Río Bravo, Clermont Estate – where, furthermore, there was failure to comply with a judicial order of reinstatement of dismissed workers – and the Municipality of San Miguel Pochuta);

– dismissals for having submitted lists of claims to negotiate a collective agreement (Municipality of Samayac, El Tesoro Estate – where a judicial order for reinstatement had been issued);

– dismissal of trade unionists (Los Angeles and El Arco Estates) and non-compliance with judicial orders for the reinstatement of trade unionists (Municipality of Puerto Barrios);

– failure to pay statutory benefits to trade unionists, as ordered by the judicial authority (Mi Terra Estate, Municipalities of Chiquimulilla and Cuyotenango Suchitepéquez); and

– refusals by the Municipality of Cuyotenango Suchitepéquez to grant trade union licences as provided for under the legislation.

(g) The Committee reminds the Government that the ILO's technical assistance is at its disposal. The Government must ensure an adequate and efficient system of protection against acts of anti-union discrimination, which shall include sufficiently dissuasive sanctions and prompt means of redress emphasizing reinstatement as an effective means of redress.

B. Allegations presented by the CGTG

759. In its communication dated 9 April 2007, the CGTG alleges violations of the trade union rights of the Civil Aeronautical Trade Union (USTAC) and its Secretary-General, Ms Imelda López de Sandoval, who had been subjected to an investigation by the human resources department which resulted in, among other things, a document containing non-standard information (credit card data, names of contact persons, details of legal proceedings against her). She was also ordered to move her vehicle and found it with one of its windows down. The official record of a meeting between representatives of the trade union and the human resources department indicates that, according to the human resources department, the vehicle was simply moved by Ms López de Sandoval, that it is not the policy of the General Directorate of Civil Aviation to conduct investigations into the trade union and its members, and that it had simply been collecting data to update the institution's database (which had also been done with regard to other employees). The meeting in question concluded with an agreement to promote dialogue and communication between the department and the trade union and to draw up a timetable of meetings to settle any disputes that might arise.

760. In its communication of 22 May 2007, the CGTG presents a complaint by Ms Imelda López de Sandoval to a representative of the Prosecutor-General for Human Rights. According to the complainant, at midday on 22 February 2007 she was on her way to her car, a white Toyota Yaris assigned to the union, in the car park used by employees of the General Directorate of Civil Aviation, when she noticed that the front window on the driver's side was wide open, which caused her concern. After inspecting the outside of the vehicle, she got in with some trepidation as she did not know whether her car had been tampered with or whether anything had been placed inside it. She considers this to be an act of harassment and intimidation by the civil aviation authorities. Subsequently, she was informed by a colleague that she was being investigated, for no reason whatsoever, to the point of being harassed and kept under surveillance by General Directorate staff. The complainant indicates that, in the days that followed, she learned from a commercial agency that the head of airport security had gained access, through an enterprise called Infornet, to all her data, including information on her legal status, loans she had taken out and other facts potentially prejudicial to her. When she asked the authorities the reason for the investigation, she was told that its sole purpose was to obtain up to date information; however, that would not have warranted such an extreme investigation.

761. Furthermore, according to the complainant, on 15 May 2007, workers held a lunchtime protest in front of the building of the General Directorate of Civil Aviation, calling for the dismissal of the General Directorate's head of human resources for his constant abuse and bullying of the institution's employees. These workers were threatened by the General Directorate's chief maintenance officer, who said that any worker who was five minutes late back to work would be reported and subsequently dismissed, and then took a number of photographs of those present. The complainant also states that, on 18 May 2007, participants attending the union's extraordinary general assembly unexpectedly

encountered two security officers at the entrance to the General Directorate's function room (where there is usually no security officer), the door to which was closed. The security officers asked the participants where they were going and what was going on, which alarmed them and caused them concern. Two additional security officers, including the chief of security, were found in another area known as "Falcon 26" (another entrance to the room, on the street side), which was interpreted as a form of harassment and intimidation against the participants.

C. The Government's reply

762. In its communication of 22 March 2007, the Government sent a list of the cases involving trade unionists which have been referred to the Office of the Special Public Prosecutor for Offences against Journalists and Trade Unionists, which include the allegations of acts of violence and threats contained in the present case. In its communication of 30 April 2007, the Government indicates that, according to information provided by the Sacatepéquez Public Prosecutor's Office, on 19 March 2005, five members of the Trade Union of the Informal Sector in the City of Antigua, namely Higinia Concepción López, Moisés González Buc, Albina Chumes Tash, Sonia Sofía Buc Sajvin and Gladis Judith Chumes Tash, indicated in a complaint that they had been threatened and then physically assaulted and that property had been confiscated by unidentified municipal tourism officials. As part of the criminal proceedings, an inquiry was carried out which began with forensic medical examinations of the victims. On the basis of the results of those examinations, the case was referred to the local Justice of the Peace on 3 May 2005.

763. In its communication of 4 May 2007, the Government indicates that the judicial authority ruled in favour of reinstating the workers who had been dismissed from the El Carmen Estate (municipality of Coatepeque) but that it had not been possible to notify the defendant because the workers who had filed the complaint had not supplied the defendant's address.

764. With regard to the allegations relating to the San Lázaro Estate (Sololá Department), the Government reports that, although the judicial authority ruled in favour of the workers, the matter has not yet been resolved because the workers have not taken steps to have the ruling implemented.

765. With regard to the allegations relating to the Mi Tierra Estate, the Government reports that the relevant ruling has been duly implemented.

766. With regard to the allegations relating to the Los Angeles Estate, the employer's application for authorization to dismiss workers is currently before the Chamber of Amparo of the Supreme Court of Justice, as the decision of the Fourth Chamber of the Court of Appeals for Labour and Social Security was challenged.

767. With regard to the allegations relating to the municipality of Río Bravo (application for reinstatement submitted by workers of the municipality of Río Bravo), the Government reports that the case is currently before the Chamber of Amparo of the Supreme Court of Justice.

768. With regard to the allegations relating to the municipality of Samayac, Suchitepéquez Department (El Tesoro Estate) (application for reinstatement submitted by the workers), the problem has been resolved by the parties.

769. With regard to the allegations relating to the non-payment to trade unionists of benefits ordered by the judicial authorities (municipality of Cuyotenango, Suchitepéquez Department), the Government reports that a ruling was issued in favour of Mr Juan Pablo

Hernández Elvira and other individuals against the municipality of Cuyotenango. The competent court has indicated that it has ordered the payment of the employment benefits claimed by the complainants.

770. As for the allegations relating to Agropecuaria El Tesoro SA, the Government indicates that, because they were wrongly advised, the workers did not bring the case before the court which had issued the ruling but to another court which was not competent to implement the ruling. The Government requests the Committee to invite the complainant organizations to call on the competent court to implement the decision.

771. With regard to the allegations relating to the El Arco Estate, the Government indicates that the dismissals date back to 1994 and that the judicial authority ordered the reinstatement of the dismissed workers and doubled the penalty imposed on the estate. The judicial authority does not know whether the dismissed workers were reinstated in their posts, since they have not brought any action before it.

772. In its communication of 28 June 2007, the Government provides information originally supplied by the General Directorate of Civil Aviation on 4 June 2007, which can be summarized as follows:

– The General Directorate of Civil Aviation, through its department of human resources, has an obligation to the State, arising from the policy on the modernization of public administration and the national and international commitments undertaken by the State in the area of security, to create and update staff databases; the need for this has been highlighted by other state authorities and by the fact that the new automated human resources management system requires such an upgrade.

– In order to fulfil its obligations, the General Directorate of Civil Aviation, through its department of human resources, sent out the following circulars to all its departments: No. GRH-011-2007, indicating that up to date information had to be provided for the purpose of issuing new social security cards; No. GRH-008-2007, requesting data for the purpose of restructuring posts and salaries; and No. 37-2006 on a human resources inventory, which states specifically that: "The purpose of the present circular is to inform staff that a survey of human resources in the public sector at the national and municipal levels will be conducted on 4, 5 and 6 October 2006, to be coordinated by the Presidential Commission for State Reform (COPRE), for which the presence of staff is crucial and compulsory. This activity will be conducted in the function rooms of the General Directorate of Civil Aviation; the day and time are to be determined by the human resources department." In spite of this, Ms López de Sandoval did not show up at any time to update her information.

– It is worth noting that failure by an employee to fulfil his or her obligations does not exempt the administration from fulfilling its own obligations, and the General Directorate has therefore sought alternative ways of doing this. It has engaged a company which supplies public-domain information and plays a key role in the Directorate's activities by verifying the accuracy of information supplied by new staff and obtain up to date information when, as in the present case, it is not provided. This information is placed in the file of the worker concerned, is closely safeguarded and is available to the worker concerned on request.

– With the sole purpose of fulfilling its obligations, the General Directorate of Civil Aviation, through its human resources department, requested up to date information on Ms Imelda López de Sandoval, who did not show up at the arranged time despite being under an obligation as an employee to do so. At no point has Ms Imelda López de Sandoval been investigated with the aim of harassing her.

– When she learned that the human resources department was taking steps in cooperation with the airport security unit to obtain up to date information on her, Ms Imelda López de Sandoval applied directly to the CGTG and the National Federation of Public Servants (FENASEP) (avoiding direct dialogue with the General Directorate). Both of these bodies requested information on the steps being taken. Following that request, and in accordance with the Government's policy of dialogue, a meeting was held at the General Directorate on 19 March 2007 between representatives of the CGTG, FENASEP, USTAC and the General Directorate of Civil Aviation to address this issue. The official record of the meeting is contained in the file.

– The CGTG asked the General Directorate to conduct an investigation into what had happened and to apply such corrective measures as it deemed appropriate. In line with the Government's policy of dialogue and transparency with regard to trade union organizations, the General Directorate conducted the investigation as requested, and the results are set out in Official Note No. DG-257-07 of the General Directorate, dated 23 April 2007 (attached).

– The above note demonstrates that the requested information was never used in any way to harass or intimidate an employee, and certainly not Ms Imelda López de Sandoval. In any case, the information in question is in the public domain and can be consulted by any interested party; if Ms Imelda López de Sandoval does not agree with the information on file, she should take the necessary steps against the service and/or information providers. At the meeting on 19 March 2007, Ms de Sandoval was asked to review the file to verify the information required. That has not yet been done.

– It should also be noted that the General Directorate has always endeavoured to support its employees and to create a cordial working environment in which the personal and work-related needs of employees are met.

– Ms Imelda López de Sandoval not only presented her allegations to the General Directorate; she took them to the high-level authorities of the Ministry of Communications, Infrastructure and Housing, which also rejected them because of a lack of tangible evidence. The General Directorate accordingly asked the complainant to indicate the specific facts of the case, but received no response; instead, the complainant has conducted a campaign against the General Directorate, and especially against the head of human resources, in an attempt to have him dismissed, basing her action on subjective considerations and undermining the dignity of that individual by treating him like a common criminal.

– Attention is drawn to the contents of the official record which is in the file, in particular paragraph 9 which states: "Paragraph 9: Agreements: After all the participants at the meeting presented their views, it was agreed as follows: (a) the employer and the representatives of the employees undertake to foster ongoing dialogue and to keep a written record of any requests made; (b) steps will be taken to improve communication between trade union officials and the human resources department, and a timetable of joint meetings will be drawn up to analyse and resolve any disputes that may arise in contractual relations." The General Directorate has endeavoured to comply with this by inviting USTAC to draw up a timetable of meetings to promote communication as a mechanism to facilitate the settlement of the problems which arise in the different administrative units of the General Directorate (a copy of the invitation letter is attached); regrettably, USTAC had not responded.

– Ms Imelda López de Sandoval has presented various complaints to the Public Prosecutor's Office, none of which have been upheld.

D. The Committee's conclusions

773. *The Committee notes that the pending issues relating to the present case refer to murders or acts of violence against trade unionists, anti-union dismissals, non-payment of salaries and benefits ordered by the judicial authority, obstacles to collective bargaining, refusal to grant trade union leave, and acts of harassment against trade unionists.*

774. *With regard to the alleged murders and acts of violence, including attempts on the lives of or threats against trade unionists, the Committee deeply regrets that, except in one case (death threats against the Secretary-General of the Trade Union Association of Itinerant Vendors of Antigua), the Government has confined itself to stating that the allegations are being examined by the Office of the Special Public Prosecutor for Offences against Journalists and Trade Unionists. It also deeply regrets that no information has been provided on whether or not measures were taken to safeguard the lives and personal safety of the wife and children of the murdered trade unionist Rolando Raquec. In these circumstances, taking into account the seriousness of these allegations, the Committee expresses its deep concern about this situation of violence and the deplorable acts that have been reported. The Committee points out once again, as it did during its previous examination of the case, 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" and that "the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected". Lastly, the Committee emphasizes that justice delayed is justice denied, and reiterates its previous recommendations, which are set out below:*

- *Recalling 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 respected, the Committee deplores the murder of the trade union officials Rolando Raquec and Luis Quinteros Chinchilla, the attempt against the life of the trade unionist Marcos Alvarez Tzoc and the trade union official Imelda López de Sandoval, requests the Government to inform it urgently and without delay of the developments in the inquiries and procedures under way and expects that those responsible will be severely punished.*
- *The Committee requests the Government to take immediately all the necessary measures to safeguard the lives of the wife and children of the murdered trade unionist Rolando Raquec, from the death threats that, according to the allegations, they have received.*
- *The Committee requests the Government to communicate the outcome of the inquiries carried out by the National Police and the Prosecutor-General for Human Rights on the allegation concerning the selective surveillance and theft of laptop equipment belonging to José E. Pinzón, secretary-general of the CGTG.*

775. *With regard to the alleged death threats against the Secretary-General of the Trade Union Association of Itinerant Vendors of Antigua, the Committee notes the Government's statements according to which not one but five trade unionists presented a complaint that they had been threatened, followed by further complaints indicating that they had been physically assaulted and property had been confiscated by municipal officials; the case has been referred to the local Justice of the Peace. The Committee expects that the proceedings in question relating to the threats and assaults will be concluded in the near future and requests the Government to keep it informed in this regard.*

776. *With regard to the alleged non-payment of benefits ordered by the judicial authority to trade unionists of the Mi Tierra (municipality of Chiquimulilla) and San Lázaro Estates, the Committee notes with interest the Government's statements according to which the court ruling relating to the Mi Tierra Estate has already been duly implemented and, in the*

case of the San Lázaro Estate, the judicial authority ruled in favour of the workers, and it is now up to them to take action to have the ruling implemented.

777. *With regard to the alleged non-payment of statutory benefits ordered by the judicial authority to trade unionists in the municipality of Cuyotenango Suchitepéquez, the Committee notes the Government's statements according to which the judicial authority ruled in favour of the payment of benefits claimed by the complainant workers and the same authority ordered that payment be made. The Committee requests the Government to ensure that the payment has now been made.*

778. *With regard to the alleged dismissal of trade unionists at the El Arco Estate (municipality of Puerto Barrios), the Committee notes the Government's statements according to which the dismissals date back to 1994, the judicial authority ordered reinstatement and doubled the penalty imposed on the estate, and the judicial authority does not know whether the dismissed workers have been effectively reinstated in their posts, as they have not initiated any legal proceedings. The Committee requests the complainant organizations to inform it whether or not the workers have been reinstated in their posts.*

779. *The Committee notes the Government's statements according to which the proceedings initiated by the dismissed workers at the Clermont Estate in the municipality of Río Bravo, who had obtained a judicial reinstatement order, and the application to the judicial authority by the employer for authorization to dismiss trade unionists at the Los Angeles Estate (municipality of Puerto Barrios) are currently before the Chamber of Amparo of the Supreme Court of Justice. The Committee requests the Government to inform it of the outcome of these proceedings and sincerely expects that they will be concluded without further delay.*

780. *With regard to the alleged dismissal of trade unionists at the El Tesoro Estate (municipality of Samayac), despite a judicial reinstatement order, for having submitted lists of claims during negotiations on a collective agreement, the Committee notes the Government's statements according to which the workers obtained a favourable ruling but mistakenly applied to a court without competence in the matter to implement the ruling. The Committee requests the trade union to which these trade unionists belong to request the competent legal authority to implement the ruling to reinstate the trade unionists dismissed by the El Tesoro Estate.*

781. *The Committee notes with regret that the Government has not provided any information on the allegations relating to: (1) the workers dismissed for having tried to set up a trade union in the municipality of San Miguel Pochuta; (2) the refusal of the municipality of Cuyotenango Suchitepéquez to grant the trade union leave provided for by law; (3) non-payment of wages and other benefits ordered by the judicial authority to trade unionists in the municipality of Livingston; and (4) the absence of measures by the authorities to promote collective bargaining between the El Carmen Estate and the trade union. The Committee requests the Government to send the information requested without delay.*

782. *With regard to the allegations relating to the abusive investigation conducted by the department of human resources against Ms Imelda López de Sandoval, Secretary-General of USTAC, which led among other things to a document containing her credit card data, names of contact persons and details of legal proceedings against her, as well as an order to move her vehicle, which she found with the front window on the driver's side wide open, the Committee notes the statements made by the General Directorate of Civil Aviation and transmitted by the Government, and in particular, that: (1) the request to provide up to date information for the database was in response to security requirements and the requirements of the new automated human resources management system, which is why the presence of all staff was required; (2) the trade unionist Ms López de Sandoval did not*

show up but a company that supplies public-domain information had been engaged for such cases and in order to verify information provided by staff and obtain up to date information; (3) the file is available to the employee concerned upon request, and the employee may ask for it to be amended (Ms López de Sandoval has made no such request); (4) at no point has Ms López de Sandoval been investigated with the aim of harassing her; (5) because of the complaint lodged by trade union organizations, the General Directorate ordered an investigation, which demonstrated that the requested information has never been used to harass or intimidate any employee; (6) the allegations submitted by Ms López de Sandoval to high-level national authorities – including the Public Prosecutor's Office – have been rejected; (7) the trade union of Ms López de Sandoval and the General Directorate reached an agreement in which they undertook to promote ongoing dialogue, improve communication and draw up a timetable of joint meetings to resolve any problems that might arise.

783. *The Committee notes that the documentation provided by the complainant organizations includes an official document containing credit card data for Ms López de Sandoval, names of contact persons, and giving details of legal proceedings against her; according to the allegations, she also found her vehicle with one of its windows wide open.*

784. *In this respect, the Committee has considered that, while it is true that it is important for employers to obtain information about prospective employees, it is equally true that employees who previously belonged to a trade union or conducted trade union activities should be informed about the information held on them and given a chance to challenge it, especially if it is erroneous and obtained from an unreliable source [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 782]. The Committee notes that, in the present case, the Government has emphasized that all civil servants have the right to consult its database and to take steps to correct erroneous data. Nevertheless, the Committee recalls that trade union officials and trade unionists should have the same rights to privacy as all other people. The Committee notes with concern that, according to the documentation submitted as part of the complaint, the information collected on Ms López de Sandoval as part of the investigation into her includes her credit card data, names of contact persons and details of legal proceedings against her. The Committee therefore urges the Government to instruct the General Directorate of Civil Aviation without delay to delete this information on Ms López de Sandoval from its staff database.*

785. *With regard to the alleged threats against the employees of the General Directorate of Civil Aviation who participated in a protest in front of the building against the constant abuse by the administration (according to the allegations, the General Directorate's chief maintenance officer threatened that they would be reported and subsequently dismissed if they were five minutes late back to work, and then took photographs of them) and with regard to the intimidation by security officers against the members outside the room where the union's general assembly was to be held, the Committee regrets that the Government has not sent its observations and urges it to do so without delay.*

786. *Bearing in mind the high number of anti-union dismissals, the delays in proceedings and the failure to comply with judicial orders to reinstate trade unionists, the Committee once again reminds the Government that the ILO's technical assistance is at its disposal and that the Government must ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress, emphasizing reinstatement as an effective means of redress.*

The Committee's recommendations

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

(a) ***Recalling 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 respected, the Committee once again deplores the murder of the trade union officials Rolando Raquec and Luis Quinteros Chinchilla, and the attempt against the life of the trade unionist Marcos Alvarez Tzoc and the trade union official Imelda López de Sandoval, once again requests the Government to inform it as a matter of urgency of developments in the inquiries and proceedings currently under way, and expects that those responsible will be severely punished.***

(b) ***The Committee once again requests the Government immediately to take all the necessary measures to safeguard the lives of the wife and children of the murdered trade unionist Rolando Raquec, given the death threats which, according to the allegations, they have received.***

(c) ***With regard to the allegations of death threats against the Secretary-General of the Trade Union Association of Itinerant Vendors of Antigua, the Committee hopes that the proceedings in question relating to the threats and assaults will be concluded in the near future and requests the Government to keep it informed in this regard.***

(d) ***The Committee once again requests the Government to communicate the outcome of the inquiries carried out by the national police and the Prosecutor-General for Human Rights into the allegation concerning the selective surveillance and theft of laptop equipment belonging to José E. Pinzón, Secretary-General of the CGTG.***

(e) ***With regard to the alleged non-payment of benefits ordered by the judicial authority to trade unionists in the municipality of Cuyotenango Suchitepéquez, the Committee requests the Government to ensure that the payment has now been made.***

(f) ***With regard to the alleged dismissal of trade unionists at the El Arco Estate (municipality of Puerto Barrios), the Committee notes the Government's statements according to which the proceedings initiated by the dismissed workers at the Clermont Estate in the municipality of Río Bravo, who had obtained a judicial reinstatement order, and the application to the judicial authority by the employer for authorization to dismiss trade unionists at the Los Angeles Estate (municipality of Puerto Barrios) are currently before the Chamber of Amparo of the Supreme Court of Justice. The Committee requests the Government to inform it of the outcome of these proceedings and sincerely expects that they will be concluded without further delay.***

(g) ***With regard to the alleged dismissal of workers at the El Tesoro Estate (municipality of Samayac) for having submitted lists of claims during negotiations on a collective agreement, despite a judicial reinstatement order, the Committee requests the trade union to which these trade unionists***

belong to request the competent legal authority to implement the reinstatement order.

(h) The Committee observes with regret that the Government has not provided any information on the allegations relating to: (1) the workers dismissed for having tried to set up a trade union in the municipality of San Miguel Pochuta; (2) the refusal of the municipality of Cuyotenango Suchitepéquez to grant the trade union leave provided for by law; (3) the non-payment of wages and other benefits ordered by the judicial authority to trade unionists in the municipality of Livingston; and (4) the absence of measures by the authorities to promote collective bargaining between the El Carmen Estate and the trade union. The Committee urges the Government to send the requested information without delay.

(i) With regard to the allegations relating to the abusive investigation conducted by the department of human resources against Ms Imelda López de Sandoval, Secretary-General of USTAC, the Committee urges the Government to instruct the General Directorate of Civil Aviation without delay to delete from its staff database any information of a private nature relating to this trade unionist.

(j) With regard to the alleged threats against the employees of the General Directorate of Civil Aviation who participated in a protest in front of the building against the constant abuse by the administration (according to the allegations, the General Directorate's chief maintenance officer threatened that they would be reported and subsequently dismissed if they were five minutes late back to work, and then took photographs of them) and with regard to the intimidation by security officers against the members outside the room where the union's general assembly was to be held, the Committee regrets that the Government has not sent its observations and urges it to do so without delay.

(k) The Committee once again reminds the Government that the ILO's technical assistance is at its disposal and that the Government must ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress emphasizing reinstatement as an effectiv*e *means of redress.

CASE NO. 2540

INTERIM REPORT

Complaint against the Government of Guatemala presented by
— the International Trade Union Confederation (ITUC)
— the International Transport Workers' Federation (ITF) and
— the Trade Union of Workers of Guatemala (UNSITRAGUA)

Allegations: Murder of a portworkers' trade union official and death threats against trade unionists; dismissal of trade unionists; acts of interference by the employer; anti-dialogue attitude of the company

788. The complaints are presented in a communication from the Trade Union of Workers of Guatemala (UNSITRAGUA) dated 16 January 2007 and in a joint communication from the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF) dated 25 January 2007. The ITUC and the ITF submitted additional information in a communication dated 12 February 2007.

789. The Government sent its observations in communications dated 16 February, 22 March, 3 and 4 May and 16 October 2007.

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

A. The complainants' allegations

791. In its communication of 16 January 2007, UNSITRAGUA alleges that on the night of 15 January 2007, as Mr Pedro Zamora Alvarez, Secretary-General of the Trade Union of Workers of the Puerto Quetzal Harbour Company (STEPQ), and his youngest son were travelling home from the Puerto Quetzal Harbour Company premises, they were stopped at the village of Las Morenas in the municipality of Iztapa, department of Escuintla, by armed men, who killed Mr Zamora Alvarez and wounded his son. This act is further proof that the State of Guatemala does not ensure the minimum conditions that are necessary for the exercise of freedom of association. UNSITRAGUA requests that the Committee on Freedom of Association ask the State of Guatemala as a matter of urgency to investigate this murder and determine whether it is related to the labour dispute involving the trade union organization in which Mr Zamora Alvarez was Secretary-General. UNSITRAGUA also requests that the Committee on Freedom of Association ask the Government as a matter of urgency to take the necessary steps to safeguard the lives and physical integrity of all the members of the executive committee and advisory council of the STEPQ.

792. In their communication of 25 January 2007, the ITUC and the ITF also refer to the murder of trade union official Mr Pedro Zamora.

793. The ITUC and the ITF allege that Mr Pedro Zamora was shot dead on 15 January 2007 at approximately 7.50 p.m. as he returned home in his pick-up truck, with his two youngest children, from the portworkers' clinic, which is located on the company's premises. Approximately 50 metres from his home, a car carrying five people, which had been

following him since he left the port area, was waiting for him. The five people fired 100 bullets at Mr Pedro Zamora's car and Mr Zamora himself was shot 20 times. Although Mr Zamora tried to protect his children by getting them to lie down on the floor of the vehicle, his three-year-old son, Angel, was wounded (he is now out of danger). Mr Zamora, by then badly wounded, ended up crashing into a wall. One of the attackers approached him and fired the *coup de grâce*. The way in which Mr Pedro Zamora was murdered and the number of shots fired clearly indicate that the act was carried out by professionals and bring to mind the methods often used by paramilitaries during the dark days of Guatemala's past.

794. The five members of STEPQ's executive committee and their families have been intimidated and attacked during the past year. Mr Zamora, who was elected Secretary-General in December 2005, was the main target of these attacks and acts of intimidation which appeared to be an attempt to make him give up certain contentious areas of his trade union activities. From 9 January to March 2006, he was followed on a regular basis by a variety of vehicles, from a Toyota Yaris to a pick-up truck. Strangers had also been to his family home on a number of occasions inquiring as to his whereabouts. On 2 November 2006, the occupants of a vehicle following Mr Zamora drew their weapons and fired shots into the air. He described the car as a black or grey Chevrolet with tinted windows. He had also reported being followed constantly for the entire month of December, a situation which had forced him to make regular changes to his routine.

795. Mr Pedro Zamora was fighting to prevent the port being privatized without the involvement and participation of the workers and without consultation with the trade union and was campaigning to stop the constant violation of portworkers' trade union rights. He had fought against the refusal of the harbour company's management to negotiate a collective labour agreement and had recently opposed the company's plans to build a new container terminal for fear that this could lead to future privatization and the loss of jobs. His trade union had also called for the dismissal of the general manager, who was responsible for the privatization plans. Mr Zamora was also campaigning for the reinstatement of nine workers – all former trade union officials – who had been unfairly dismissed on 10 October 2006 for participating in a peaceful demonstration. On two occasions, the general manager of the Puerto Quetzal Harbour Company had sent plain-clothes police officers to threaten workers at demonstrations and had told them that they had to stop opposing the company's management. It should be noted that the trade union made a formal complaint in this regard, as the police officers, when questioned by trade union members, admitted that they had been sent.

796. On 10 January 2007, the trade union's executive committee attended a meeting in the Congress of the Republic, at which the Minister for Transport announced that the nine workers who had been unlawfully dismissed for taking part in a peaceful demonstration against the construction project in October 2006 were to be reinstated. This had deeply annoyed the general manager. The trade unionists had apparently been followed by a dark-coloured Toyota as they left the Congress. Mr Pedro Zamora told his colleagues that from that day onwards, he had been followed every day. One year before, STEPQ had lodged a formal complaint about threats and intimidation with the Office of the Attorney-General and Office of the Human Rights Ombudsman. Unfortunately, as subsequent events show, this proved to be in vain.

797. On 18 January, the ITUC and the ITF received reports indicating that the five remaining members of STEPQ's executive committee had received telephone calls addressing death threats to them and their families. Lázaro Noe Reyes Matta (organization secretary), Max Alberto Estrada Linares (labour and disputes secretary), Eulogio Obispo Monzón Mérida (treasurer), Oscar Giovanni González Donado (minutes and agreements secretary) and Arturo Granados Hernández (inter-union relations secretary) are constantly being watched

and followed, like Pedro Zamora. On 17 January 2007, Oscar Giovanni González Donado and Lázaro Noe Reyes Matta received a total of three anonymous calls to their mobile telephones between 1.45 p.m. and 8 p.m. The caller's voice had been electronically distorted and had told them that their colleagues and families would be killed within nine days. According to information from Amnesty International, a pick-up truck with tinted windows has been seen in recent days parked near the home of Eulogio Obispo Monzón Mérida.

798. Unfortunately, this climate of abuse, violence and impunity is longstanding. The formal and representative democracy introduced 20 years ago has not brought about many changes for the trade union movement in terms of security and the respect of workers' fundamental rights. The General Confederation of Workers of Guatemala (CGT) states that this is clear from the dozens of trade unionists who have been murdered and the failure of the Office of the Attorney-General to resolve a single one of those cases.

799. Portworkers in Puerto Quetzal have been constantly repressed by the harbour company. This persecution has been so persistent that workers and trade union officials have been forced to resign. Although the trade union had tried to establish dialogue with a view to resolving this difficult situation, the company refused to cooperate. Having exhausted that option, the trade union called a strike on 11 September 2006. In the first week, workers went on strike for one hour, with the strike time increasing by one hour each week. On 9 October 2006, the Government sent in 350 riot police. The scheduled meeting between the trade unionists and the Minister for Communication was cancelled and the nine workers mentioned above were arrested for striking illegally. In October 2006, the ITF wrote to the President of Guatemala to protest about the Puerto Quetzal crisis.

800. Moreover, the management has encouraged the establishment of a group of pro-management workers, some of which have left STEPQ (the trade union states that only 25 or 30 workers are involved). According to STEPQ, the management favours these workers and hopes they will take over the leadership of STEPQ or acquire enough power to be able to insist that they have the right to negotiate the next collective agreement.

801. In their communication of 12 February 2007, the ITUC and the ITF state that an international mission sent by both organizations to Puerto Quetzal and Guatemala City noted that the labour situation in Puerto Quetzal was very tense. There are plans to build a new terminal and to decommission the one already in existence, which would involve privatizing the service and would affect Puerto Quetzal portworkers. It is hoped that the project will be completed before the changeover of President of the Republic. STEPQ is opposed to this project and favours modernization, but with the participation of the workers.

802. The ITUC and the ITF attach a list, submitted by STEPQ, of the nine workers who were dismissed four months earlier, all of whom have been working for between nine and 11 years. During this four-month period, these workers have met with ministers and parliamentary groups and sent letters to the President, all to no avail. The harbour company's strategy involves intimidating the workers and calling them to meetings at night in Guatemala City (more than 100 km from Puerto Quetzal). Two judicial bodies have already ruled in favour of the workers and have ordered their reinstatement by the harbour company, yet the latter has not done this, preferring instead to pay a fine. Moreover, the workers have been offered a nine-month contract on the condition that they leave the trade union and relinquish all their employment benefits. The workers – who are in a difficult economic situation despite the trade union's support and who cannot even enrol their children in school – have refused this offer.

803. The ITUC and the ITF state that it was not possible to obtain copies of any of the complaints filed by Mr Pedro Zamora or by other STEPQ members, or a copy of the report referring to the time when two armed police officers entered the harbour company and were forced to identify themselves. The harbour company uses special police officers – those belonging to the port and airport police – and ordinary police officers cannot enter the premises unless they have been given special orders to do so.

B. The Government's reply

804. In its communications dated 16 February, 22 March, and 3 and 4 May 2007, the Government stated that the death of Mr Pedro Zamora was being investigated by the Office of the Attorney-General with a view to establishing who was responsible for the act and determining the criminal and civil liabilities involved. In this respect, on 31 January 2007, the Office of the Attorney-General stated that:

> Agency No. 3, the Office of Crimes against Journalists and Trade Unionists, received the police report set forth in official letter No. 25/2007, dated 15 January 2007, from the national civil police, substation No. 31-32, of the municipality of Puerto Iztapa in the department of Escuintla, reporting the murder of Mr Pedro Zamora Alvarez, who was shot dead on 15 January 2007 in the village of Las Morenas in the municipality of Puerto Iztapa, department of Escuintla. Accordingly, an investigation was opened into these events on the basis of evidence found at the scene of the crime, statements from eye-witnesses and ballistic surveys and comparisons. It is important to note that according to the investigation carried out to date, it is not true that 100 shots were fired at the vehicle or that Mr Pedro Zamora was shot 20 times, and forensic tests show no signs of a *coup de grâce*, as was alleged by the Secretary-General of the International Trade Union Confederation. In fact, the body has eight bullet wounds, the majority of which are on the upper extremities, and it was a shot fired at the victim's back which caused the mortal wound, the cause of death being pulmonary cardio-aortic perforation.

805. The Government states that the police are taking steps to ensure the safety of Mr Lázaro Reyes, acting Secretary-General of the STEPQ, and have set up security around the perimeter of the trade union's headquarters. It should be noted that according to the documentation provided, this protection is justified by the complaints received by an ILO technical assistance mission to the country and by the obligation to comply with ILO Conventions Nos 87 and 98. According to the complaints, Mr Lázaro Reyes was being subjected to stalking and telephone death threats. The Government also provided a report by the Puerto Quetzal Harbour Company, dated 13 March 2007, concerning the present complaint, which reads as follows:

> The labour situation in the Puerto Quetzal Harbour Company is not tense; on the contrary, it could be described as harmonious. Nor have any acts of intimidation been carried out; on the contrary, we respect freedom of association, as evidenced by the three workers' trade unions in the company, which are allowed to carry out their activities extensively. We have insisted on continuing to negotiate the collective agreement, even though the trade union has been responsible for the breakdown of talks on three occasions, first by engaging in a collective dispute, then by opposing extension work, and finally by calling a de facto and illegal strike.
>
> Despite the foregoing, the company has insisted on continuing to negotiate the new collective agreement. To date, 105 of the draft's 111 articles have been approved.
>
> Puerto Quetzal is extending its facilities owing to the increasing use of containers in international maritime transport. All the ports in the region are focusing their attention on the heavy flow of maritime container transport, for which vessels require deeper docks and a separate specialized terminal, as this type of cargo is handled differently from traditional cargo. The extension work is essential and in no way affects the workers; on the contrary, it involves new work opportunities that could benefit many people and, if it is not carried out, Puerto Quetzal risks losing its competitiveness in the region.

At the end of September and beginning of October 2006, the Trade Union of Workers of the Puerto Quetzal Harbour Company organized a de facto strike which they called a "permanent assembly" (an institution which does not exist by law and which is prohibited by Congress Decree No. 35/96). This strike was therefore illegal and severely punishable under the "Unionization and Regulation of Strike Action by State Employees Act", Decree No. 71/86, as amended by Decree No. 35/96 of the Congress of the Republic, and under Governmental Agreement No. 700-2003, which defines the operation of the port as an essential public service.

Despite direct talks, the trade union did not want to abandon its stance, which was resulting in serious losses for the country's economy. In fact, far from changing its unlawful stance, the trade union obstructed freedom of movement by blocking the passage of vehicles and preventing the departure of vessels that had concluded their operations in the port. This forced the company to take administrative measures, in full compliance with the abovementioned laws. The executive body, for its part, sent members of the national civil police to maintain order and ensure the smooth functioning of the port. These measures culminated in the de facto strike.

The Puerto Quetzal Harbour Company has always respected labour rights and we have always acted within the boundaries of the law. In the case of the nine workers who were dismissed, this decision was taken because their line managers and the port security department had reported them as being the most rebellious and provocative workers and the law obliges us to act in order to maintain the essential public service provided by the port. All these individuals were grass-roots workers, none were trade union officials, and following their dismissal they sought reinstatement through the labour court. It is not true that two judicial bodies have ruled in favour of the workers. On the contrary, the Puerto Quetzal Harbour Company, wishing to reach a satisfactory settlement in this dispute, maintained dialogue and after a number of initiatives concluded an administrative settlement contract with each of the workers, through which the company annulled the dismissal agreements and the workers withdrew their demands to be reinstated. At present, the nine workers are employed in their respective posts in Puerto Quetzal.

Nor is it true that the working conditions of Puerto Quetzal workers are "disastrous"; on the contrary, *no public or private company in Guatemala pays better wages and allowances or has more benefits for its workers than Puerto Quetzal*, as can be seen in the comparative table attached. The trade union's executive committee has been assigned three petrol-driven vehicles, which it uses constantly to travel to the capital, but this is for trade union activities and not because the company has ordered it to do so. It has a building which it uses as its trade union headquarters, with secretaries, which is fully equipped with the latest in computer equipment. Seven of its members enjoy 30 days' paid leave a month, special leave for non-officials, economic support for various activities and receive 100,000 quetzals a year for a Christmas party.

In general, the workers receive a basic salary higher than that in any other public or private company in Guatemala. They also enjoy a holiday bonus, a seniority bonus, an availability bonus, a responsibility bonus, an annual bonus, incentive payments, a family allowance, contributions towards school materials, education grants, bursaries for their children who are studying (in monthly payments), wage increments, Christmas hampers, medical insurance, life insurance, funeral expenses (including transport), canteen facilities and meals financed by the company, vehicles for transporting workers, economic benefits, medical services, including the services of a dentist and ophthalmologist, housing, overtime paid at double time, and 20–31 working days of holiday entitlement. Each year, the workers are given three pairs of shoes, four uniforms, a body warmer, a helmet, a jacket and toiletries, and receive 5 per cent of the company's profits, which is distributed among them. They have a clinic, a crèche, a training centre and a pension and retirement plan, as well as all the statutory employment benefits, some of which have been increased, such as the Christmas bonus paid by the company, which is 25 per cent higher than that decreed by the State.

While remaining at your disposal should you require further information, in order to provide a clearer picture to the First Deputy Minister, I attach a copy of the current collective labour agreement, most of which has already been renegotiated by the negotiating committees.

806. The Government confirms that the nine Puerto Quetzal Harbour Company workers who were dismissed have now been reinstated in their jobs.

807. In its communication of 16 October 2007, the Government states that the action taken by the Office of the Attorney-General has allowed for an identification of the potential suspects in the murder of trade union official Pedro Zamora, and that the judicial authority has issued the corresponding arrest warrants in order to initiate the pertinent procedure.

C. The Committee's conclusions

808. *The Committee notes with concern that the complainants have made the following serious allegations: (1) the murder of portworkers' trade union official Mr Pedro Zamora and the wounding of one of his sons while the murder was being committed; and (2) that Mr Pedro Zamora and his family had received death threats and been stalked and intimidated (before his death), as had the five other members of the executive committee of the portworkers' trade union and their families; according to the complainants, the formal complaint regarding threats and intimidation which had been lodged by the trade union with the Office of the Attorney-General one year prior to these events had not resulted in any action being taken. The Committee also notes that the complainants allege: (i) the dismissal of nine trade unionists who had participated in a peaceful demonstration in October 2006, and who were arrested; (ii) the company's refusal to discuss the workers' problems and the plans to restructure and privatize the company; and (iii) the setting up of a pro-management group of workers to replace the leadership of the portworkers' trade union or to acquire enough power to claim the right to negotiate the next collective agreement.*

809. *The complainants emphasize that these acts occurred in the context of a lack of dialogue on the part of the company and efforts by the portworkers' trade union to prevent the port from being privatized without the participation of the workers and without consultation with the trade union, and to prevent the construction of a new container terminal which could contribute to this objective.*

810. *The Committee takes note of the Government's statements and notes with interest that protection has been provided to the acting Secretary-General of the STEPQ and that security has been set up around the perimeter of the trade union's headquarters. The Committee also notes with interest that the nine workers who were dismissed for having participated in a trade union demonstration in October 2006 (which was peaceful, according to the complainants) have been reinstated in their jobs and that 105 of the 111 articles in the new collective agreement have already been renegotiated by the negotiating committees.*

811. *With regard to the murder of trade union official Mr Pedro Zamora on 15 January 2007, the Committee notes the Government's initial statements according to which: (1) the murder is currently being investigated by the Office of the Attorney-General with a view to establishing who was responsible for the act and determining the criminal and civil liabilities involved; and (2) evidence has been gathered from the scene of the crime, statements have been taken from any eye-witnesses, and ballistic surveys and comparisons have been carried out; it has been determined that the body presented fewer wounds than had been alleged by the complainants. The Committee also notes that the action taken by the Office of the Attorney-General has allowed for an identification of the potential suspects in the murder of trade union official Pedro Zamora, and that the judicial authority has issued the corresponding arrest warrants in order to initiate the pertinent procedure.*

812. *The Committee strongly condemns the murder of trade union official Mr Pedro Zamora and the wounding of his 3-year-old son particularly in light of the fact that, as concerns this trade union official, the portworkers' trade union had, according to the complainants, filed a complaint with the Office of the Attorney-General concerning threats and intimidation, and Mr Pedro Zamora himself, together with the five remaining members of the trade union's executive committee (and their families), had received death threats and been stalked and intimidated.*

813. *The Committee draws the Government's attention to the principle whereby a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty; freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed, and the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 43–45 and 52]. Moreover, the Committee recalls that the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights.*

814. *In these circumstances, the Committee urges the Government to do everything within its power to step up the current investigation and actions to arrest the suspected perpetrators of the murder of trade union official Mr Pedro Zamora, and to ensure that investigations are also carried out into the death threats, stalking and intimidation to which this trade union official and the five remaining members of the executive committee and their families were subjected. The Committee asks the Government to keep it informed in this respect and emphasizes the importance of resolving these crimes without delay and identifying and punishing the guilty parties. The Committee also asks the Government to indicate how the complaint regarding threats and intimidation, filed by the trade union with the Office of the Attorney-General prior to the murder of trade union official Mr Pedro Zamora, was followed up. Lastly, the Committee requests the Government to take all necessary steps to protect the members of STEPQ's executive committee who are being threatened and to keep it informed in this respect.*

815. *With regard to the company's alleged refusal to discuss the workers' problems and the plan to restructure and privatize the company, the Committee notes that according to the Puerto Quetzal Harbour Company, there are three trade union organizations in the company, the labour situation is harmonious, not tense, it is not true that the working conditions are "disastrous" (the company has provided information in this respect) and, through collective bargaining, 105 of the 111 articles in the draft collective agreement have been approved; furthermore, according to the company, the extension of the company's facilities for international container transport involves new work opportunities that could benefit many people. The Committee requests the Government to ensure that in the event of the restructuring or privatization of the Puerto Quetzal Harbour Company, full, frank and in-depth consultations are held with the trade union organizations.*

816. *With regard to the allegations concerning the strike in Puerto Quetzal in 2006, the Committee notes the company's indication in the report sent by the Government that the strike was illegal under national legislation, in particular Governmental Agreement No. 700-2003, which defines the operation of the port as an essential public service; according to the company, the executive branch sent members of the national civil police to maintain order and ensure the smooth functioning of the port.*

817. *In this respect, the Committee wishes to point out that on previous occasions it has not considered transport generally and ports (loading and unloading) to be essential services in the strict sense of the term [see* ***Digest****, op. cit., para. 587]. It considers, however, that in the event of the suspension of a service that is not essential in the strict sense of the term, the imposition of a minimum service may be justified in a sector of vital importance to the country, such as port loading and unloading and transport generally [see* ***Digest****, op. cit., para. 616]. However, the workers' and employers' organizations concerned must be able to participate in determining the minimum services which should be ensured, and in the event of disagreement as to the service that should be maintained, legislation should provide that the matter be resolved by an independent body having the confidence of the parties concerned and not by the administrative authority.*

818. *In these circumstances, the Committee requests the Government, in consultation with representatives of workers' and employers' organizations, and taking into consideration the particular circumstances of the country, to take the necessary measures to review and amend the legislation pertaining to essential services, which prohibits strikes in the port sector so as to bring it into conformity with Conventions Nos 87 and 98.*

819. *As for the alleged intervention of the national civil police during the strike, the Committee notes that, according to the company, the purpose of the police intervention was to maintain order and ensure the smooth functioning of the port (the company states that the strikers blocked the passage of vehicles and prevented vessels from leaving port). In this respect, given that neither the complainants nor the Government have provided more detailed information on the alleged acts, the Committee would merely recall in general the principle that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and 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 when controlling demonstrations which might result in a disturbance of the peace [see* ***Digest****, op. cit., para. 140].*

820. *The Committee asks the Government to respond to the allegation that the Puerto Quetzal Harbour Company favours a particular group of workers so that it might replace the leadership of STEPQ or acquire enough power to claim the right to negotiate the next collective agreement.*

The Committee's recommendations

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

(a) The Committee strongly condemns the murder of trade union official Mr Pedro Zamora and the death threats and other acts of intimidation against the five remaining officials of the trade union STEPQ, and urges the Government to do everything within its power to step up the current investigation and the measures to arrest the suspected perpetrators of the murder of trade union official Mr Pedro Zamora, and to ensure that investigations are also carried out into the death threats received by this trade union official and the five remaining members of the executive committee and their families. The Committee asks the Government to keep it informed in this regard and emphasizes the importance of resolving these crimes without delay and identifying and punishing the guilty parties. The Committee also asks the Government to indicate how the complaint

regarding threats and intimidation, filed by the trade union with the Office of the Attorney-General prior to the murder of trade union official Mr Pedro Zamora, was followed up. Lastly, the Committee asks the Government to take all the necessary steps to protect the members of STEPQ's executive committee who are being threatened and to keep it informed in this respect.

(b) The Committee requests the Government to ensure that in the event of the restructuring or privatization of the Puerto Quetzal Harbour Company, full, frank and in-depth consultations are held with the trade union organizations.

(c) The Committee requests the Government, in consultation with representatives of workers' and employers' organizations, and taking into consideration the particular circumstances of the country, to take the necessary measures to review and amend the legislation pertaining to essential services, which prohibits strikes in the port sector so as to bring it into conformity with Conventions Nos 87 and 98.

(d) The Committee requests the Government to respond to the allegation that the Puerto Quetzal Harbour Company favours a particular group of workers so that it might replace the leadership of STEPQ or acquire enough power to claim the right to negotiate the next collective agreement.

CASE NO. 2517

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

Complaint against the Government of Honduras presented by the International Textile, Garment and Leather Workers' Federation (ITGLWF)

Allegation: The complainant organization alleges anti-union dismissals of union officials and many union members

822. The complaint is contained in a communication from the International Textile, Garment and Leather Workers' Federation (ITGLWF) dated 5 September 2006.

823. In view of the Government's failure to reply, the Committee has been obliged on three occasions to postpone its examination of this case. At its meeting in June 2007, the Committee made an urgent appeal to the Government, drawing its attention 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 might present a report on the substance of these cases if the observations or information requested had not been received in due time [see 346th Report, para. 10]. To date, the Government has not sent its observations.

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

A. The complainant's allegations

825. In its communication of 5 September 2006, the ITGLWF states that it is presenting a formal complaint against the Government of Honduras because of its inability to guarantee that workers at the Tiara plant can exercise the right of freedom of association. The plant in question is situated in the export processing zone in Calpules, San Pedro Sula. The Trade Union of Workers at Tiara Industria SA de CV (SITRATIARA) was formed some time ago but its officials were then dismissed. Nevertheless, a new executive body was elected and the new officers obtained registration from the Ministry of Labour on 6 May 2006. The new union applied to affiliate to the ITGLWF.

826. The ITGLWF alleges that elected members of the second executive body were also dismissed between 21 and 29 June 2006 on the pretext of "restructuring". The trade union then elected four acting officers, but they too were immediately dismissed, as were four other union members. The dismissed members of the union's executive board were: the President, María Zenia Gómez, dismissed 21 June 2006; the Treasurer, Laura Peña Bonilla, dismissed 22 June 2006; the General Secretary, Eusebio Martínez Alvarado, dismissed 27 June 2006; the Proceedings Secretary, Francisca Rivera, dismissed 28 June 2006; Fiscal Policy Officer Mayra Suyapa Carraxo Baquedano, dismissed 29 June 2006; Vice-President Marquín Anael Vásquez, dismissed 29 June 2006; Education Secretary Santos Manuela Banegas Aguilar; Cooperative Affairs Secretary Mirian Martha Guerra Barillas, dismissed 29 June 2006; and Press and Propaganda Secretary Olga Janeth Domínguez González, dismissed 29 June 2006. The following trade union officials were also dismissed: interim Cooperative Affairs Secretary Mariana Luna, dismissed 3 July 2006; interim Vice-President Antonio Rivera, dismissed 3 July 2006; interim President Ana Ruth Guzmán, dismissed 10 July 2006; and interim Proceedings Secretary Reina Martínez, dismissed 10 July 2006.

827. The complainant organization adds that the following trade union members were also dismissed: Karla Ortega, dismissed 4 July 2006; Erika Vásquez, dismissed 4 July 2006; Mayra Baquedano, dismissed 5 July 2006; Lillian Martínez, dismissed 10 July 2006; Reina Martínez, dismissed 10 July 2006; Ana Ruth Guzmán, dismissed 10 July 2006; Lilian Ramos, dismissed 19 July 2006; Edith Aguilar, dismissed 19 July 2006; Marilyn Ortega, dismissed 20 July 2006; Nery Jiménez, dismissed 20 July 2006; Belkis Bonilla, dismissed 26 July 2006; Isidro Aníbal Zelaya, dismissed 26 July 2006; Ana Grijalva, dismissed 26 July 2006; Elizabeth Miranda, dismissed 27 July 2006; Santos Manuales, dismissed 31 July 2006; Luis Marcelino González, dismissed 1 August 2006; Carolina Rodríguez, dismissed 1 August 2006; Uber Romero, dismissed 1 August 2006; José Francisco, dismissed 1 August 2006; Juan Reyes, dismissed 2 August 2006; Nildy Flores, dismissed 8 August 2006; Edith Moreno, dismissed 8 August 2006; Wilder Castro, dismissed 18 August 2006; Henry Fernández, dismissed 18 August 2006; Julia Castillo, dismissed 22 August 2006; Jefry, dismissed 22 August 2006; Marie Esther, dismissed 22 August 2006; Teresa Argueta, dismissed 23 August 2006; Andrea Lagos, dismissed 25 August 2006; and Priscila Cruz, dismissed 25 August 2006. The ITGLWF indicates that, of the workers dismissed as a result of "restructuring" between 21 June and 25 August, only seven were not union members. There was never any prior discussion on restructuring at the plant, and since mid-July there have been reports that the company is seeking to hire new workers.

828. The ITGLWF states that it has been in contact with the company Tiara on a number of occasions, and that the management has never even attempted to explain why the proposed restructuring was necessary, or indicated whether there were objective and verifiable criteria for selecting these workers rather than others for dismissal if restructuring was in fact being carried out. According to the ITGLWF, the company has stated that it was not aware that the dismissed workers were trade union members. However, the trade union

officials enjoyed legal protection by virtue of trade union immunity, and the company should have reinstated them as soon as it was informed of the situation.

829. The ITGLWF states that, contrary to the statements made by the company, there are indications that the dismissals were anti-union in nature, and specifically that:

– supervisors and managers made it clear to the union officials concerned that they had been selected for dismissal because of their participation in union activities. For example, the supervisor of line 14, Suyapa Machado, remarked to the union General Secretary Eusebio Martínez Alvarado just before he was dismissed that she knew he was a union member and demanded to know who had recruited him;

– when the union officer Mirian Guerra tried to deliver the Ministry registration certificate to the company on 29 June, the company refused to accept it and told her she was dismissed;

– on Friday, 30 June, after the dismissal of the last member of the union's executive body, the Director of the company instructed supervisors to organize meetings at each production line and to inform workers that the union was finished and henceforth they should concentrate on their work;

– when a labour inspector tried to visit the plant on 29 June 2006 in order to confirm that dismissals had occurred and to inform the management that the union had received its legal registration certificate, he was denied access to the plant even when he returned with a police officer. The inspector concluded in his report that he was unable to deliver the certificate to the company's management;

– on 7 June 2006, the dismissed General Secretary, Eusebio Martínez, struck up a conversation with the senior managers' driver who informed him that the Director had told him he would never allow a trade union in his factory ("a union committee set up is one that has to be knocked down" are his alleged words).

830. The complainant states that, on 13 July 2006, a meeting took place at the Regional Labour Office with the aim of resolving the problem. The representative of the Ministry of Labour recommended that the union officials be reinstated in their posts. However, at a follow-up meeting on 18 July 2006, the legal representative of the Tiara plant indicated that the company did not agree with reinstatement. In view of this situation, the labour authorities merely noted that, since the issue could not be resolved through conciliation, the parties were free to refer the case to the labour courts.

831. In early August 2006, there were reports that supervisors had begun to gather workers' signatures in support of a letter expressing their satisfaction with conditions at the factory. Needless to say, the letter has no legitimacy whatsoever and merely serves to highlight the unfair pressure put on the workers by management. About a week later, the manager of the company arranged a meeting at which he stated his intention of setting up a workers' committee as an alternative to the union. On 19 July 2006, the ITGLWF sent a communication to the Minister of Labour reminding her that it is the responsibility of the Ministry of Labour to enforce the Labour Code and to make it clear to the Tiara company that observance of the law is not optional. Bringing a case before the courts is too lengthy a process and not a viable way of resolving issues of anti-union discrimination and enabling union officials to be reinstated in their posts while continuing to hold the union office to which their members have elected them.

B. The Committee's conclusions

832. *The Committee deeply regrets the fact that, despite the time that has elapsed since the complaint was made, the Government has not sent its observations as it was requested to do on several occasions, in particular through the urgent appeal addressed to it at the Committee's meeting in June 2007. Under these circumstances, and in accordance with the applicable procedural rules [see the Committee's 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee will present a report on the substance of this case, given that it does not have the observations requested from the Government.*

833. *The Committee reminds the Government, first, that the purpose of the whole procedure for the examination of allegations concerning violations of freedom of association is to ensure respect for the rights of employers' and workers' organizations in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating, for objective examination, detailed factual replies concerning the substance of the allegations brought against them [see the Committee's First Report, para. 31].*

834. *The Committee notes that, in the present case, the complainant organization alleges that, in the context of anti-union harassment, between June and August 2006 the Tiara plant in the Calpules export processing zone in San Pedro Sula dismissed the members of the executive board of SITRATIARA and many rank and file union members (according to the complainant the plant claimed that the reason for this was restructuring, although of the workers dismissed between June and August 2006, only seven were not union members, no information had ever been given on restructuring, and since July 2006 the plant has been trying to hire new workers). According to the allegations, the company had not facilitated the task of the labour inspectorate and was promoting a "workers' committee" as an alternative to the union.*

835. *Noting the complainant's statements to the effect that the Regional Labour Office has intervened on at least two occasions in an attempt to resolve the dispute and recommended that the union officials be reinstated in their posts, the Committee recalls that it has on many occasions emphasized that "Anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions", and that "One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom." [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, paras 769 and 799].*

836. *Under these conditions, noting also that the complainant emphasizes that bringing a case before the courts would be too lengthy a process, the Committee requests the Government to send copies of the labour inspection reports relating to this dispute, to continue without delay to take measures, subject to substantive evidence and/or information warranting the contrary, to bring about the reinstatement of the many dismissed union officials and members of SITRATIARA, and to ensure that the company does not adopt any anti-union measures, in particular, that it does not promote a workers' committee as an alternative to the trade union. The Committee also emphasizes the need to impose speedy and dissuasive*

sanctions for anti-union acts. The Committee requests the Government to keep it informed in this regard.

The Committee's recommendation

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

> ***Noting that the complainant emphasizes the fact that bringing a case before the courts would be too lengthy a process, the Committee requests the Government to send copies of the labour inspection reports relating to this dispute, to continue without delay to take measures, subject to substantive evidence and/or information warranting the contrary, to bring about the reinstatement of the many dismissed union officials and members of SITRATIARA, and to ensure that the company does not adopt any anti-union measures, in particular, that it does not promote a workers' committee as an alternative to the trade union. The Committee also emphasizes the need to impose speedy and dissuasive sanctions for anti-union acts. The Committee requests the Government to keep it informed in this regard.***

CASE NO. 2512

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

Complaint against the Government of India presented by the MRF United Workers' Union

Allegations: The complainant alleges acts of anti-union discrimination and interference in trade union affairs through the creation of puppet unions, dismissals, suspensions and transfers of active trade union members, arbitrary reduction of wages, physical violence and lodging of false criminal charges against its members. It also alleges that the employer does not recognize it for the purpose of collective bargaining. Finally, it alleges that the legal system does not provide for sufficient protection of trade union rights

838. The complaint is set out in communications by the MRF United Workers' Union dated 21 August and 26 September 2006, and 28 March and 15 June 2007.

839. The Government sent its observation in a communication dated 14 September 2007.

840. India has ratified neither 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

841. In its communications dated 21 August and 26 September 2006, and 28 March and 15 June 2007, the MRF United Workers' Union alleges acts of anti-union discrimination and interference in trade union affairs through the creation of puppet unions, dismissals, suspensions and transfers of active trade union members, arbitrary reduction of wages, physical violence and lodging of false criminal charges against its members. It also alleges that the employer does not recognize the complainant organization for the purpose of collective bargaining. Finally, it alleges that the Indian legal system does not provide for sufficient protection of trade union rights.

842. The complainant organization explains that it represents 954 out of 1,170 permanent workers of the Arakonam factory of MRF Limited, the leading tyre manufacturing company in India. It was duly registered on 29 December 2003.

843. By way of background, the complainant explains that, in 1978, workers of the Arakonam factory tried to establish a trade union but failed, facing retaliatory measures by the management. In the same year, the management established a puppet union, the MRF Cycle Tyre Unit Employees' Association. The office bearers of the Association had always been selected by the management. All permanent workers of the factory were obliged to pay trade union dues to the Association. Throughout the years, the management has been unilaterally imposing terms and conditions of service on workers through the so-called "settlements" entered into with the puppet union and by coercively securing signatures of permanent workers on empty notebooks indicating their acceptance of the "settlement".

844. In 1989, the workers of the factory, desirous of having an effective trade union to represent them, established the MRF Workers' Union, affiliated to the Centre of Indian Trade Unions (CITU). The management took various measures to crush the union. The General Secretary of the union was dismissed. Several office bearers and members of the union were suspended for their trade union activities and disciplinary proceedings were initiated against them. One hundred apprentices and workers under probation were terminated from service because of their association with the union. Trade union members suffered from interdepartmental transfers and wage cuts. In addition, the management lodged over 25 false criminal complaints against the office bearers and members of the union. Significantly, all accused persons were acquitted. In September 1992, the management issued individual lockout notices to several members of the union and thereafter lifted the lockout in respect of the workers who agreed to abide by the decisions of the MRF Cycle Tyre Unit Employees' Association. Seventy-one members of the union who disagreed continued to be locked out. Forty-four of them were dismissed and some opted to enter into individual settlements with the management. The General Secretary of the union succumbed to the pressure of the management and dissociated himself from the union. In these circumstances, the activities of the union gradually ceased. Legal proceedings regarding the dismissals of some of the members of the union for their trade union activities are still pending.

845. About a decade later, in 2001–02, workers at the Arakonam factory once again decided to establish a genuine trade union that would represent their interests. Two workers, Messrs N. Ramathilagam and P. Bhaskar, were particularly active and for that reason were dismissed on 19 March and 25 May 2002, respectively, allegedly for availing of leave without prior permission and poor performance. Both workers have questioned the validity of their dismissals. The industrial disputes raised by them in this regard are pending before the Labour Court, Vellore. Despite the management's opposition, the MRF United Workers' Union was established in 2003.

846. On 1 December 2003, the President of the complainant organization informed the management about the establishment of the union and of the names of its elected trade union office bearers. On 5 February 2004, the union communicated the list of its members. By that time, 898 of 1,029 permanent workers of the factory had joined the union. By its communication, the newly established trade union sought the recognition by the management of status as sole collective bargaining agent and requested that trade union dues for the MRF Cycle Tyre Unit Employees' Association were no longer deducted from the wages of its members.

847. The complainant alleges that, following its establishment, the management of the company embarked on a vicious campaign against the union and provides detailed information on the hostile treatment of the union and its members by the enterprise management.

848. In particular, the complainant alleges large-scale transfers of trade union members to the departments or areas of work with which they were not familiar and had no training for. In several cases, that led to injuries. According to the complainant, the management took measures to ensure that no documentary records of such transfers existed. The complainant refers to the case of Mr D. Christopher, a member of its executive committee, who was transferred under oral orders on 3 May 2004 from the curing section in the tube plant to the bias tyre-building section in the main tyre manufacturing plant in order to ensure that there was no executive committee member of the complainant union in the tube plant. He demanded that the transfer order be issued in writing and, as a consequence, he was not allotted any work and kept idle for a day, following which a severe warning letter dated 4 May 2004 was issued to him for not complying with the order of his supervisor. Thereafter, for over two years, his payslips continued to indicate that he was working in the tube plant while, in fact, he had been working in the tyre plant. The members of the union have made individual representations to the management protesting against such transfers. In reply, the management considered that workers should be trained to work in all areas and could be utilized as per the exigencies of work and that there were no other motives behind the "job rotation".

849. In 2004, 27 workers were transferred after becoming members of the complainant organization. Ten members were transferred after they refused to sign the "settlement" of 22 December 2004 entered into by the management with its then puppet union, the MRF Cycle Tyre Unit Employees' Association. Six members have been assigned new jobs. Thus, together with ten workers transferred for their efforts to form the complainant union in 2002, at least 56 office bearers and members of the complainant union have been transferred because of their union activities and at least six of them have been assigned new jobs resulting in lower wages, without issuing any written orders to that effect.

850. The complainant further alleges that the management has discontinued the rotation practice in respect of several members of the complainant organization in the pre-compounding chemical section of the Banbury area, where, due to the hazards posed to the health of workers by chemicals, workers are usually engaged on a rotational basis. Moreover, the management does not provide them with the necessary protective clothing, gloves and masks. Nine members of the complainant organization have been continuously engaged in the hazardous Banbury pre-compounding chemical section following their transfers.

851. It has also been the practice of the management to issue warning letters and show cause notices to the members of the union accusing them of "go-slow" actions or of poor performance and imposing penalties, including dismissals. The complainant explains that warning letters and memos form part of the service record of a worker and are taken into consideration when the penalty to be imposed on a worker is decided upon. Most of the members of the complainant organization had not been issued even a single warning letter or memo prior to the establishment of the union. However, following the establishment of

the complainant organization, with a view to deliberately creating a blemish in the service records and with a view to creating a fear psychosis among the workers, the management has been arbitrarily issuing warning letters and memos to the office bearers and members of the complainant organization. Since January 2004, the management has issued over 660 warning letters and memos to the members of the complainant organization, many of which were issued in February 2004 when, during one week, members of the complainant organization wore black badges and did not eat at the factory canteen to protest against the attitude of the management towards their union. The management objected to their wearing black badges and issued warning letters to a large number of members of the union stating that their action was contrary to the standing orders of the company and that it could have chosen to take disciplinary action against them but was letting them off with severe warnings. Similarly, it also issued warning letters to a large number of members of the union stating that their action of not eating in the canteen had caused loss to the company and was against the standing orders of the company.

852. At least 64 show cause notices were issued by the management to the members of the union to victimize them for their trade union activities between 2004 and 2007. Some were followed by dismissals. In addition to two workers dismissed for their efforts to establish the MRF United Workers' Union, 19 trade union members were dismissed in 2004 and one in 2005. Four cases concerning dismissals are currently pending adjudication before the Labour Court, Vellore. The remaining 16 cases are at various stages of individual industrial dispute procedure. In its most recent communications, the complainant indicates that Mr D. Christopher, a member of its executive committee, was dismissed on 25 February 2007 and its General Secretary, Mr G. Shankar, was dismissed on 4 April 2007, bringing the number of dismissed trade unionists to 24.

853. The management had also terminated services of 15 workers engaged as apprentices or under probation, despite their long years of service, for merely having interacted with the members or office bearers of the complainant organization. The complainant points out that, out of fear of losing their jobs, contract workers, apprentices and workers on probation do not belong to any union. Cases concerning five workers were pending before the Labour Court. Ten workers have raised individual industrial disputes in respect of their termination before the Labour Officer, Vellore, which is yet to issue the conciliation failure reports, which would enable these workers to apply to the Labour Court for the adjudication of their industrial disputes.

854. Also, following the establishment of the union, in 2004, 37 trade union officials and members were suspended pending disciplinary proceedings for alleged acts of misconduct. The management has also imposed penalty of suspension without wages for various periods of time on 28 trade union members. According to the complainant, all suspensions were aimed at victimizing workers for asserting their freedom of association and, more importantly, at making them leave the union for fear of losing their employment. Other trade unionists were suspended in 2006 and 2007. According to the most recent communications of the complainant, two workers still remain under suspension.

855. In addition, the complainant alleges that 92 trade union members suffered from arbitrary wages reduction.

856. The complainant further alleges that, in order to weaken their union, the management adopted a practice of lodging false complaints against trade union and its members. On 17 February 2004, under the instructions of the management, a false complaint against three office bearers and two members of the complainant organization was made alleging that they had used caste names and had thus committed an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The complainant points out that those accused of the offences under the said Act cannot be released on bail and

believes that the management considered that, by having key office bearers and members of the union arrested and detained, it could crush the union. However, the police did not act on the complaint and the management did not succeed in its designs to have trade union leaders arrested and detained.

857. Furthermore, the management, through hired henchmen, threatened the members of the complainant organization with physical violence so as to force them to state that they belonged to the MRF Cycle Tyre Unit Employees' Association. On 28 February 2004, the complainant organization made a complaint to the Superintendent of Police, Vellore, seeking that unauthorized persons be asked to leave the factory premises and filed Writ Petition before the Madras High Court seeking that the District Superintendent of Police be instructed to act upon the complaint. Fearing the physical violence against its members, the union advised them not to report for work as from 11 March 2004. On 18 March 2004, the High Court asked the Chief Inspector of Factories to report on the situation at the factory, who concluded that the situation was normal. The management considered the absence of workers from 11 to 18 March 2004 to be an illegal strike and therefore made corresponding deductions from their salaries. The complainant union has questioned the validity of this decision before the appropriate authority under the Payment of Wages Act which, instead of deciding the issue, has treated it as an industrial dispute in respect of which an order of reference needs to be issued.

858. On 8 March 2004, the flag post of the complainant union and the union noticeboard at the factory gate were removed by the Highways Department at the behest of the management. On 11 and 13 March 2004, the henchmen hired by the management broke the glass windows of two buses of the company. A complaint was then filed against seven trade union members alleging that they had stoned two buses and stopped workmen from going to the factory. Four of these workers were dismissed. However, in the criminal proceedings held against them, they were acquitted of all charges.

859. While the management was engaged in such efforts to wipe out the complainant union, it continued to deduct trade union dues from the wages of its members and transfer them to the MRF Cycle Tyre Unit Employees' Association, in spite of the letter addressed by the complainant union to the management on 5 February 2004 seeking that such deductions not be made. In March 2004, the management coercively procured letters from 60 members of the complainant organization, in which they attested to be members of the MRF Cycle Tyre Unit Employees' Association. In April 2004, the complainant organization filed a civil suit before the Madras High Court seeking a declaration that the complainant organization is the majority union of workers of the Arakonam factory and that the MRF Cycle Tyre Unit Employees' Association does not have any representative capacity. In this submission, the complainant organization expressed its readiness to face a secret ballot to demonstrate that it has the overwhelming support of the workers of the Arakonam factory. The court initially permitted the complainant union to file a suit but then revoked its permission stating that it lacked territorial jurisdiction over the issues relating to the Arakonam factory. This decision was confirmed on appeal by a Division Bench of the High Court and subsequently by the Supreme Court.

860. Earlier, on 9 February 2004, and then on 17 May 2004, the complainant organization made a representation to the Commissioner of Labour seeking that a secret ballot be held among workers of the factory to determine the majority union. On 30 June 2004, the Commissioner of Labour sent a reply to the union stating that no action could be taken on their representation, as the law did not provide for the determination of the majority union by secret ballot.

861. On 4 July 2004, 300 members of the complainant union went outside the factory premises to draw the attention of the Government to the acts of anti-union discrimination perpetrated

by the management, hoping that it would look into the issue and take the necessary action. However, such peaceful demonstrations of the workers have been to no avail and the Labour Department has shown a callous indifference to the plight of the workers.

862. On 25 September 2004, Mr G. Shankar, the General Secretary of the union, suffered an electric shock when his shift supervisor deliberately turned on the electrical mains switch while Mr G. Shankar was performing electrical panel maintenance work. In reply to his representation, the management denied that any such incident had taken place. Mr G. Shankar then made a police complaint but the police refused to file the complaint. On 22 November 2004, Mr G. Shankar was threatened that he would be dismissed unless he ensured that all cases filed by the complainant organization against the management were withdrawn and he left the union. Two days later he was suspended on the false charge of intimidating his shift supervisor.

863. On 25 November 2004, in view of the expiry, on 31 December 2004, of the term of the wage "settlement" entered into by the management with the MRF Cycle Tyre Unit Employees' Association and apprehending that the management would once again enter into such an agreement, the complainant union raised an industrial dispute under section 2(k) of the Industrial Disputes Act before the Deputy Commissioner of Labour in respect of its charter of demands. Conciliation proceedings were accordingly initiated. However, the management, failed to appear before the Conciliation Officer on 9 and 17 December 2004. The proceedings were then rescheduled for 27 December 2004. However, on 22 December 2004, the management entered into yet another "settlement" with the MRF Cycle Tyre Unit Employees' Association. Thus, instead of participating in the conciliation proceedings relating to the complainant union's charter of demands, the management had signed an agreement with its puppet union nine days prior to the expiry of the previous "settlement", thereby creating an obstacle to the declaration by the complainant organization of an industrial dispute.

864. The "settlement" of 22 December 2004, which in no way can be considered a genuinely negotiated collective bargaining agreement, is another instance of unilateral imposition of the terms and conditions of employment by the management and is to be in force until 31 December 2008. Using threats of disciplinary actions and dismissals, the management coercively obtained the workers' signatures on blank notebooks, which were later used as proof of their acceptance of the "settlement" or membership in the MRF Cycle Tyre Unit Employees' Association. Despite the pressure, 147 members of the complainant union refused to sign either the blank notebook indicating their acceptance of the "settlement" or other papers given to them by the management. As a result, these workers saw their wages reduced and their requests for leave constantly refused. On 27 December 2004, the complainant organization duly notified the management that the "settlement" would not be binding on its members who were forced to affix their signatures and that the receipt of revised wages was without prejudice to their rights and contentions regarding the validity of the settlement.

865. On 24 December 2004, the complainant union raised another industrial dispute under section 2(k) of the Industrial Disputes Act before the Deputy Commissioner of Labour in respect of the validity of the settlement of 22 December 2004. Conciliation proceedings in respect of both the industrial dispute regarding the charter of demands and the validity of the settlement were held together. The management falsely claimed before the Conciliation Officer that the new "settlement" was accepted by 1,003 workers and that only 137 workers had not accepted it. It thus claimed that the disputes of the complainant union were not industrial disputes within the meaning of the Industrial Disputes Act. On 28 February 2005, during the conciliation proceedings, the complainant union had expressed its willingness to prove its majority by secret ballot. It also sought that the

management's claim be tested by secret ballot. However, the Conciliation Officer denied the union's request.

866. The conciliation proceedings did not settle the disputes. The conciliation failure report was issued by the Conciliation Officer only on 20 June 2005, after the complainant union filed a Writ Petition before the Madras High Court and a notice to this effect was issued by the court. However, it failed to mention the dispute relating to the validity of the "settlement" of 22 December 2004. Once the report became available, the government of Tamil Nadu failed to refer the disputes for adjudication. The complainant union therefore filed a Writ Petition before the Madras High Court seeking the issue of a Writ of Mandamus directing the government of Tamil Nadu to refer the industrial disputes raised by the complainant for adjudication. This case is yet to be listed for hearing.

867. Meanwhile, the management tried to cover up its acts of anti-union discrimination against the complainant union and its denial of collective bargaining rights to the members of the complainant union had been seeking to falsely project the matter as one of inter-union rivalry between the complainant organization union and the MRF Cycle Tyre Employees' Association. It has also been making attempts to falsely project the complainant union as an unruly organization seeking to disrupt the functioning of the factory. On 12 January 2005, about two weeks before the Indian Republic Day when the complainant union was to hold a gate meeting and hoist the national flag, the management made a representation to the Deputy Superintendent of Police, Arakonam, alleging that the complainant union had been indulging in inter-union rivalry and had been disturbing the industrial peace after the majority union had signed a wage agreement with the management. It therefore sought that permission not be given by the police to the complainant union for hoisting the flag and conducting meetings anywhere near the company's premises. The company thereafter filed an application to the district court making various false allegations against the complainant union. The company alleged that the complainant union had only 120 members and that there was an inter-union rivalry between the complainant union and the MRF Cycle Tyre Employees' Association. It also alleged that the complainant union was out to obstruct the functioning of the Arakonam factory. The company therefore sought for the issue of an injunction restraining the complainant union and its members from gathering or in any way demonstrating within 200 metres of the factory premises. It also sought for an injunction restraining the complainant union and its members from interfering with the movement of staff and officers from and into the company's premises and from in any way interfering with the movement of raw materials and finished goods from and into the factory. The company also filed interim applications, seeking orders of interim injunction. On 25 January 2005, the court granted the orders of interim injunction. The Civil Revision Petitions filed by the complainant union against the orders of injunction in the Madras High Court were dismissed. The main suit was decreed ex parte. The complainant organization is currently taking steps to get the ex parte decree set aside and have the matter decided on merits.

868. In May 2006, with a view to make it appear that the MRF Cycle Tyre Employees' Association is a democratic union, the management, through its hand-picked office bearers announced that elections by secret ballot would be held for the executive committee of the Association. The elections were held on 14 May 2006. Contrary to the management's expectation, certain workers chose not to support the management's nominees. The management refused to accept the electoral verdict and threatened the newly elected office bearers so as to force them to resign from their posts in the association. The management then tried to disrupt the general body meeting held by the association on 26 May 2006. However, due to the presence of the police at the request of the newly elected office bearers, who had anticipated such a problem, the meeting could go on.

869. To penalize workers for exercising their free choice, the management began yet another anti-union campaign, including through the use of warning letters, disciplinary proceedings and suspensions. With a view to ensuring that the workers of the Arakonam factory were again deprived of any genuine trade union representation, the management set up a new trade union, the MRF Arakonam Workers' Welfare Union. On 26 and 27 July 2006, the management representatives, threatening the workers with dismissal, coercively obtained the signatures of a large number of workers indicating that they were members of the new union. The management also informed the workers that those who became members of the new union would be given a 2,000 rupees (Rs) pay increase and an ad hoc advance of Rs.2500. In July 2006, trade union dues were deducted from the wages of over 900 workers and transferred to the newly established puppet union.

870. The complainant indicates that, on 25 January 2007, the Labour Officer, Vellore, issued notices to the complainant organization and to the management of MRF Limited with a view to gathering information in respect of the present complaint. This exercise was undertaken by the Labour Officer for the purpose of enabling the Government of India to submit its reply on the matter to the ILO. Between January and March 2007, a Labour Officer of the government of Tamil Nadu had called representatives of the three trade unions in the factory and the management to ascertain the facts. While the report was produced in March 2007, the government of Tamil Nadu had not forwarded it to the Government of India.

871. In February 2007, upon learning that the MRF United Workers' Union had lodged a complaint to the Committee on Freedom of Association, the management of MRF Limited informed workers that making a complaint to the ILO was of no use, since it was not a court, the orders of which would be binding. Furthermore, it declared that the company's money power would ensure that the Government would provide a favourable report. They threatened those workers who continued to support the MRF United Workers' Union with dismissals. Workers were told that those who signed any document in support of the union's complaint to the ILO would be dismissed. Moreover, one of the major shareholders of the company visited houses of several workers and cautioned their families that workers would lose their jobs unless they stopped supporting the complainant organization.

872. Also in February 2007, false complaints have been lodged against six officers and members of the complainant trade union. Among these persons, Mr B.M. Baskaran, a member of the complainant union and the Vice-President of the MRF Cycle Tyre Unit Employees' Association, was suspended on the basis of this false charge.

873. Finally, the complainant indicates that the management has been recently encouraging the members of the complainant organization to change their trade union affiliation by offering a substantial increase of wages.

874. The complainant emphasizes that, even when, during the elections on 14 May 2006, the management's nominees for the executive committee of the MRF Cycle Tyre Unit Employees' Association were defeated and workers elected their own representatives, the management coerced the members of the complainant organization to sign documents indicating that they were members of the MRF Arakonam Workers' Welfare Union newly established by the management. Thus, even while the complainant union has in fact been the majority union in the Arakonam factory for about the last three years, not only has the management failed to recognize the complainant union but also resorted to numerous measures to destroy it.

875. The complainant adds that the Industrial Disputes Act does not provide for any immediately effective means to deter the commission of all such acts of anti-union

discrimination and interference in trade union activities, nor does it contain any provisions allowing for immediate relief to be provided in cases of anti-union discrimination or infringement of collective bargaining rights. Moreover, while the Industrial Disputes Act provides for prosecution of the management of companies for the commission of "unfair labour practices" under the Act, including certain acts of anti-union discrimination, and prescribes penalties for the commission of such acts, the courts can take cognizance of an offence punishable under the Act only when a complaint in this regard is made by, or under the authority of, the Government. In short, prosecution for unfair labour practices under the Act is dependent on the Government. In practice, the government of Tamil Nadu seldom prosecutes employers for the commission of acts of anti-union discrimination. According to the complainant, the Labour Department of the government of Tamil Nadu is under the grip of the influence of the management of MRF Limited. In particular, the failure by the Labour Department of the government to refer the union's collective disputes regarding its charter of demands and the "settlement" of 22 December 2004 for adjudication under section 10(1) of the Industrial Disputes Act indicates that it is highly unlikely that the Government would sanction any request by the complainant union for the prosecution of the company for the commission of unfair labour practices.

876. There is neither central nor Tamil Nadu legislation regarding the recognition of trade unions. Thus, employers in most states in India, including Tamil Nadu, are not statutorily bound to recognize trade unions representing the majority of the workers. However, a non-statutory Code of Discipline, adopted in 1961 by certain federations of employers and workers, prescribes procedures for the recognition of trade unions. According to the code, a union that satisfies the conditions for recognition prescribed therein may seek assistance from the relevant implementation machinery, i.e. the central or state labour machinery, when its request for recognition is not accepted by the employer. The code further prescribes the procedure for the verification of membership of a union, according to which, representativity is determined by the number of members on record. There is nothing in the code prescribing that the ascertainment of the majority union in a situation where more than one union seeks representative status for collective bargaining purposes should be done by secret ballot. The code is of a voluntary and recommendatory nature and does not prescribe any legal sanctions for failure to observe a recommendation made under it.

877. The complainant considers that an objective verification of the representative status of the complainant union and the other unions in the Arakonam factory can be made only by holding a secret ballot for the following reasons: the management of the company had been making deductions from the wages of members of the complainant organization and transferring them to the MRF Cycle Tyre Unit Employees' Association and, subsequently, to the MRF Arakonam Workers' Welfare Union; the management has also been coercively obtaining signatures from the members of the complainant union to falsely indicate that they had left the complainant organization. Such documents would falsely make it appear that members of the complainant union were no longer its members, whereas it represents 909 out of 1,170 permanently employed workers at the Arakonam factory. The management contests, however, that over 900 permanent workers are members of the MRF Arakonam Workers' Welfare Union and 72 permanent workers are members of the MRF Cycle Tyre Unit Employees' Association. It appears therefore that a substantial number of workers have been compelled to have dual or even triple trade union membership against their will. Thus, the complainant considers that only a secret ballot conducted by a neutral body in the presence of independent observers would ensure that the workers can indicate their support for the union which they really wish to be represented by, without any fear of reprisal by the management.

878. Under the Industrial Disputes Act, adjudication of all collective industrial disputes pursuant to the failure of conciliation proceedings is conditional upon a reference made by the Government under section 10(1) of the Act. The Government often takes months to

decide whether or not to refer the dispute for adjudication and very often declines to make such reference, driving workers to years of litigation. In the present case, following the issue of the conciliation failure report on 20 June 2005 in respect of the industrial dispute relating to the complainant union's charter of demands, the Government has still not made its decision. In these circumstances, the complainant has been obliged to address the High Court to secure the Government's decision. However, even assuming that the complainant union succeeds in obtaining such an order from the High Court, the Government may choose not to refer the disputes for adjudication. In addition, even if the disputes are in fact taken up for adjudication, considering that the judicial system in India is fraught with massive delays, it could take several years for the disputes to be adjudicated and further appellate proceedings to be completed.

879. The complainant union seeks that the Government of India and the provincial government of Tamil Nadu be asked to take appropriate measures to ensure that: the management of the company no longer engages in acts of anti-union discrimination against the officials and members of the complainant organization; all its members dismissed for their trade union activities are reinstated in service with all consequent benefits, including full payment of lost wages; all its members suspended for their trade union activities are allowed to resume work and are granted all consequent benefits, including arrears of wages; all pending disciplinary proceedings against its members initiated on the grounds of their trade union activities are dropped; the false criminal charges against its members are also dropped and that the concerned workers are suitably compensated; trade union members who were subjected to transfers after the establishment of the complainant organization are allowed to return to their previous workplaces; its members are not discriminated against in the matter of wages and other benefits; its members are not engaged in the pre-compounding chemical section of the Banbury area of the Arakonam factory in a discriminatory manner; the representative status of the complainant union and other unions at the Arakonam factory are determined expeditiously by secret ballot conducted by a neutral body in the presence of independent observers; and that the management respects the collective bargaining rights of workers of the Arakonam factory by entering into collective bargaining with the trade union determined as the majority union.

B. The Government's reply

880. In its communication dated 14 September 2007, the Government indicates that this case falls under the jurisdiction of the State Government of Tamil Nadu. The matters raised in this case have been examined by the Deputy Commissioner of Labour of the State Government, who had been instructed to call both the enterprise management and the complainant trade union to make inquiries and to settle the issues raised in the complaint. The Government forwards the information provided by the Tamil Nadu Government. The Government also points out that India has a well-established conciliation machinery, both at the state and the national levels to address the grievances of the social partners. However, the complainant trade union has taken no recourse to these established institutions of various levels before submitting its complaint. The Government therefore questions whether the Committee should examine this complaint.

881. According to the information provided by the Tamil Nadu Government, three trade unions exist at the enterprise: the complainant union, the MRF United Workers' Union, the MRF Arakonam Workers' Welfare Union and the MRF Cycle Tyre Unit Employees' Association.

882. The Government acknowledges that pursuant to the bipartite settlement between the management and the MRF Cycle Tyre Unit Employees' Association dated 22 December 2004, workers are paid on a "piece per rate" basis. The settlement is binding on the parties.

The complainant union is not a party to the settlement. The payment of wages on "piece per rate' basis is not prohibited by law. However, if the complainant union is aggrieved by the bipartite settlement, it can raise a dispute before the Conciliation Officer. If the issue is not settled through conciliation, it may be referred for adjudication.

883. With regard to the allegation that the management of the company established a puppet union, elected its leadership, deducted trade union dues from the wages of all permanent workers and transferred them to the puppet union, unilaterally imposed terms and conditions of service on workers through "settlements" with the puppet union, the Government indicates that, if the union dues are deducted from the wages of workers without their consent, the aggrieved workers can file a claim under the Payment of Wages Act for recovery of illegal deductions. None of the workers has come forward with any complaint of illegal deductions from their salaries. Furthermore, if the union or workers is aggrieved by the bipartite settlement, it can raise a collective dispute under the Industrial Disputes Act.

884. With regard to the recognition of trade unions, the Government explains that in Tamil Nadu, recognition of a trade union is neither a statutory right granted to trade unions nor a statutory obligation imposed on enterprise management. In fact, in Tamil Nadu, there is no legislation relating to the recognition of trade unions as majority unions or as collective bargaining agents. If the complainant union is aggrieved by the refusal of the management to recognize it, it can address the State Evaluation and Implementation Committee, a tripartite body, which assesses the membership of trade unions in a given industry or establishment through verification of records and recommends to the employer to recognize one of the unions. The Government further indicates that the membership and subscription register and Form E, submitted by the complainant union under the Trade Union Act 1926 has been verified. The claim of the union that 945 workers (representing 70.66 per cent of the total permanent workforce) are members of the union is supported by documents. The union could have addressed the State Evaluation and Implementation Committee for the recognition.

885. With regard to the allegation that about 56 office bearers and members of the union were transferred and six of them were assigned new jobs resulting in lower wages, the Government indicates that the management admits to have effected interdepartmental and intradepartmental transfers and explains that such transfers are permissible if authorized under the certified standing orders or under the terms of appointment. Transfers per se are not illegal, unless they are contrary to the provisions of the certified standing orders or terms of appointment applicable to the worker concerned. Workers aggrieved by the transfer orders can raise a dispute before the conciliation machinery. If the dispute is not settled, it can be brought before a judicial body established under the Industrial Disputes Act.

886. The Government notes the complainant's allegation to the effect that warning letters and memos on flimsy grounds as well as show cause notices for initiation of disciplinary proceedings for their dismissal were issued to the members of the complainant trade union with a view to creating a blemish in their service records; 30 office bearers, including Mr G. Shankar, General Secretary, and other members of the union were suspended on false grounds; 28 members of the union were imposed penalty of suspension, which resulted in loss of wages; 22 members of the union were dismissed; and that office bearers and members of the union were implicated in false criminal cases. In this respect, the Government indicates that while the complainant union provides documents to establish that workers were frequently transferred, demoted, suspended and issued memos and warning letters after they joined the union, the union fails to establish that these actions on the part of the management were intentional and mala fide. There are institutional mechanisms, such as conciliation, labour courts and industrial tribunals to which workers

can have recourse to redress their grievances. Specifically, if any act of discrimination is practised by the management, as alleged by the union, the union may raise a dispute under section 2(k) of the Industrial Disputes Act before the Conciliation Officer.

887. With regard to the criminal charges, only the competent investigating agencies and courts can determine whether the charges brought are well-founded. In this respect, the alleged cases of false criminal charges are still under the investigation by the police. In particular, with regard to the alleged false charges initiated against Mr B.M. Baskaran who, thereafter, was placed under suspension and Mr D. Christopher, dismissed, the Government indicates that only a judicial body can determine whether the actions taken against these two trade unionists were in violation of the legislation. The Government indicates that Mr Baskaran's and Mr Christopher's strained relation with the management cannot be ruled out.

888. The Government further notes the complainant's statement that while the Industrial Disputes Act provides for prosecuting and penalizing the management of the company for "unfair labour practices", the court can only take cognizance of an offence when a complaint in this regard is referred to it by the Government and that an industrial dispute relating to the complainant union's charter of demands is still pending, as the Government had not taken a decision on referring this case to the court, despite the fact that a "failure of conciliation" report was issued on 20 June 2005. In this respect, the Government indicates that, on 28 March 2007, an order had been issued by the Labour and Employment Department. It further explains that an employer can be prosecuted for committing an "unfair labour practice", only if the Labour Court or the Industrial Tribunal constituted under the Industrial Disputes Act finds that a particular action of the employer amounts to an unfair labour practice as defined under the same Act. Only then a prosecution could be launched for committing an "unfair labour practice". The Government can not, *suo moto*, come to the conclusion that a particular act of the employer amounts to an "unfair labour practice".

889. With regard to the alleged cases of suspension, the Government states that the complainant fails to specify whether the suspension was imposed as a punishment or simply as a measure pending inquiry. The Government explains that suspension pending inquiry is usually connected with a disciplinary action initiated against the worker and, in this case, the worker has to wait for the completion of the disciplinary action. No dispute could be raised pursuant to the labour laws until the inquiry is completed. If the suspension is a punishment for misconduct, it is compulsory for the employer to follow the procedure prescribed by the legislation before imposing such a punishment. The aggrieved worker can raise a dispute under the Industrial Disputes Act regarding the suspension imposed as a punishment. If the issue is not amicably settled, it can be referred to the Labour Court for adjudication.

890. The Government further indicates that the complainant failed to prove that the enterprise management used threats against supporters of the complainant trade union. As to the warning letters issued to the members of the complainant trade union, subsequently to the lodging of the present complaint in August 2006, the Government indicates that while it is true that warning letters were issued to the members of the union, that in itself does not constitute a violation of labour laws or infringement of the workers' rights.

C. The Committee's conclusions

891. *The Committee notes that the complainant, the MRF United Workers' Union, alleges that the management of MRF Limited subjected the members of the complainant trade union to anti-union discrimination. In particular, the complainant alleges filing of warning notices and memos, show cause notices, dismissals, suspensions and transfers of active trade*

union members, arbitrary reduction of wages and various acts of harassment and intimidation. The complainant further alleges the employer's interference in trade union affairs through the creation of puppet unions. It also alleges that the employer does not recognize the complainant organization for the purpose of collective bargaining and refuses to bargain collectively with it, preferring to deal with its puppet union. Finally, the complainant alleges that the legal system does not provide for a sufficient protection of trade union rights.

892. *The Committee notes the Government's communication by which it submits the observations of the Government of Tamil Nadu and also raises a preliminary question of receivability of the complaint. According to the Government, the complainant did not use the available state and national machinery to settle the issues raised in the present complaint. In this respect, although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see Rules of procedure for the examination of complaints alleging violations of freedom of association, para. 30].*

Anti-union discrimination

893. *The Committee notes the detailed and extensive information (with supporting documentation) provided by the complainant on the alleged acts of anti-union discrimination committed by the management of MRF Limited. The Committee notes with concern that the complainant's attempts to bring the attention of the authorities to the violation of trade union rights at the Arakonam factory either through demonstrations or appeals to relevant authorities of the government of Tamil Nadu, in particular the Inspector of Factories, the Commissioner of Labour, the authorities under the Payment of Wages Act and even the police appear to have been to no avail and that the government of Tamil Nadu has not only failed to fully examine the complainant's allegations but has also failed to refer the pending industrial disputes for adjudication.*

894. *The Committee notes the Government's statement that, while the complainant union provided documents to establish that workers were frequently transferred, demoted, suspended, issued memos and warning letters and dismissed after they joined the union, the union failed to establish that these actions on the part of the management were intentional and mala fide or constituted anti-union discrimination. The Government further states that the union or workers could have addressed the existing institutions established under the Industrial Disputes Act to redress their grievances.*

895. *The Committee recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. No one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and the persons responsible for such acts should be punished. It further recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissals, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate, which they hold from their trade unions. The Committee considers that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 769, 772 and 799].*

896. *The Committee recalls that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest**, op. cit., para. 835]. The Committee considers that as long as protection against anti-union discrimination is in fact ensured, the methods adopted to safeguard workers against such practices may vary from one State to another; but if there is discrimination, the government concerned should take all necessary steps to eliminate it, irrespective of the methods normally used [see **Digest**, op. cit., para. 816]. The Committee notes that throughout its reply, the Government indicates that while the complainant trade union provides documentary evidence of transfers, suspensions, dismissals, memos, warning and show cause notices, it fails to prove that these actions taken by the management against trade union officers and members of the complainant trade union constituted anti-union discrimination. In this respect, the Committee considers that since it may often be difficult, if not impossible, for a worker to prove that he or she has been the victim of an act of anti-union discrimination, the legislation, or practice and processes should provide ways to promptly remedy these difficulties. The Committee notes that most of the cases concerning dismissals of permanent and other workers in 2004–06 are still pending before either the Labour Officer or the Labour Court. In these circumstances, the Committee requests the labour and judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and emphasizes that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts [see **Digest**, op. cit., para. 827].*

897. *The Committee notes with concern that, in addition to the dismissal of 22 union members over the last few years, the factory most recently dismissed Mr G. Shankar, General Secretary of the complainant trade union (February 2007) and Mr D. Christopher, a member of its executive committee (April 2007). The Committee urges the Government to conduct an independent inquiry without delay into all alleged acts of anti-union discrimination suffered by the officials and members of the MRF United Workers' Union and, if these allegations are found to be true, to provide redress for the damages suffered. Specifically, the Committee requests the Government to ensure that all workers dismissed for their trade union activities are reinstated in service with all consequent benefits, including full payment of lost wages, subject to substantive evidence and/or information warranting the contrary; all workers suspended for their trade union activities are allowed to resume work and are granted all consequent benefits, including arrears of wages; all pending disciplinary proceedings initiated on the grounds of trade union membership and activities are dropped; false criminal charges against trade union members are dropped and that the concerned workers are compensated; trade union members transferred because of their membership or union activity are allowed to return to their previous workplaces. The Committee further requests the Government to take the necessary measures to ensure that the members of the complainant organization are not discriminated against in the matter of wages and other benefits and that they are not engaged in the pre-compounding chemical section of the Banbury area of the Arakonam factory in a discriminatory manner. The Committee requests the Government to keep it informed in respect of the above.*

Interference in trade union affairs

898. *The Committee notes the complainant's allegations of the employer's interference in its internal affairs through the creation of puppet unions and anti-union tactics in the form of threats, pressure, filing of false complaints against the complainant trade union, presentation of statements to workers confirming their membership in the puppet union and financial incentives offered to workers to encourage them to change their trade union affiliation. The Committee notes the Government's statement to the effect that the aggrieved workers or the union can address the competent bodies under the Industrial*

Disputes Act in order to redress their grievances. Once again, the Committee regrets the inaction of the government of Tamil Nadu in the face of the numerous and detailed allegations put forward by the complainant. It therefore urges the Government to conduct an independent inquiry without delay into all allegations of interference by the factory management into trade union internal affairs and, if the allegations of the complainant are found to be true, to take all necessary steps to ensure that there are sufficiently dissuasive sanctions imposed so that the management refrains from any further such acts so as to safeguard the independence of any workers' organization at the factory and, in particular, so as to ensure that the complainant organization may carry out its activities freely.

Insufficient protection of trade union rights

899. *The Committee notes the complainant's allegation that neither national nor state legislation provides for sufficient protection against acts of anti-union discrimination and interference in trade union internal affairs and that available legal procedures are long and burdensome. The Committee recalls that the Government is responsible for preventing all acts of anti-union discrimination and must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned and considers that the legislation should lay down explicitly remedies and penalties against acts of anti-union discrimination. It further recalls that legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations [see **Digest**, op. cit., paras 813, 817 and 862]. The Committee therefore requests the Government to actively consider, in full and frank consultations with the social partners, legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions against acts of anti-union discrimination and interference in trade union internal affairs. It requests the Government to keep it informed of the steps taken or measures envisaged in this respect.*

900. *The Committee further notes the complainant's allegation that access to justice by workers and trade unions is conditional upon a reference for adjudication made by the competent authorities. The Committee recalls its conclusions in Case No. 2228 where it noted that, firstly, the right to approach the court directly, without being referred by the State Government, is not conferred on suspended workers and, secondly, that such a right is still not conferred on trade unions and requested the Government to take all necessary measures, including the amendment of the Industrial Disputes Act of 1947, so as to ensure that suspended workers as well as trade unions could approach the court directly [see 338th Report, para. 200]. The Committee urges the Government, in consultation with the social partners, to amend the relevant provisions of the Industrial Disputes Act so as to ensure that workers and trade unions may approach the court directly, without being referred by the State Government and to keep it informed of the measures taken or envisaged in this respect.*

Collective bargaining

901. *The Committee notes the complainant's allegation that the management of the enterprise refuses to accept its majority status and, therefore, recognize it as a collective bargaining agent, preferring to determine working conditions through "settlements" concluded with a puppet union. It further notes the complainant's allegation that, except for the non-binding Code of Discipline adopted in 1961, neither national nor Tamil Nadu legislation provides for the procedure of recognition of trade unions. Moreover, even the code does not provide for a possibility to ascertain the majority union in a situation where more than one union seeks representative status for collective bargaining purposes through a secret ballot.*

902. *The Committee notes that according to the Government, in Tamil Nadu, there is no legislation relating to the recognition of trade unions as majority unions or as collective bargaining agents. If the complainant union is aggrieved by the refusal of the management to recognize it, it can address the State Evaluation and Implementation Committee, a tripartite body, which assesses the membership of trade unions in a given industry or establishment through verification of records and recommends to the employer to recognize one of the unions.*

903. *Firstly, with reference to the above principles concerning the protection against acts of anti-union discrimination and interference in trade union internal affairs, the Committee recalls the importance of the independence of the parties in collective bargaining and stresses that negotiations should not be conducted on behalf of employees or their organizations by bargaining representatives appointed by, or under the domination of, employers or their organizations. Participation in collective bargaining and in signing the resulting agreements necessarily implies independence of the signatories from the employer or employers' organizations. It is only when their independence is established that trade union organizations may have access to bargaining [see* ***Digest****, op. cit., paras 868 and 966].*

904. *It further considers that employers should recognize for collective bargaining purposes the organizations representative of the workers employed by them [see* ***Digest****, op. cit., paras 952 and 953]. In order to encourage the harmonious development of collective bargaining and to avoid disputes, it should always be the practice to follow, where they exist, the procedures laid down for the designation of the most representative unions for collective bargaining purposes when it is not clear by which unions the workers wish to be represented. In the absence of such procedures, the authorities, where appropriate, should examine the possibility of laying down objective rules in this respect [see* ***Digest****, op. cit., para. 971]. In this respect, the Committee considers that, in order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: representativeness and independence. The determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity [see* ***Digest****, op. cit., para. 967]. The Committee considers that, in the present case, in light of the information provided by the complainant as the background to this case and its allegations, the determination of the most representative trade union by secret ballot is not only an acceptable but a desirable way to ensure that workers exercise their right to choose the organization which shall represent them in collective bargaining. The Committee notes the Government's indication that following verification, the claim by the MRF United Workers' Union that it represents the majority of the workers in the Arakonam factory is confirmed and that the complainant trade union can address the State Evaluation and Implementation Committee for recognition, which then can recommend to the employer to recognize the union. In these circumstances, and taking into account the fact that the abovementioned Committee can only issue conclusions of a recommendatory nature and the complainant's allegation that the enterprise management refuses to recognize it, the Committee requests the Government to take appropriate measures to obtain the employer's recognition of that union for collective bargaining purposes. Such recognition of the majority union is all that much more important in light of the steps that had been taken by the enterprise to bypass the MRF United Workers' Union and enter into a "settlement" with an admittedly minority union. The Committee requests the Government to keep it informed in this respect.*

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

The Committee's recommendations

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

(a) The Committee urges the Government to conduct an independent inquiry without delay into all alleged acts of anti-union discrimination suffered by the officials and members of the MRF United Workers' Union and, if these allegations are found to be true, to provide redress for the damages suffered. Specifically, the Committee requests the Government to ensure that:

- ***all workers dismissed for their trade union activities are reinstated in service with all consequent benefits, including full payment of lost wages subject to substantive evidence and/or information warranting the contrary;***
- ***all workers suspended for their trade union activities are allowed to resume work and are granted all consequent benefits, including arrears of wages;***
- ***all pending disciplinary proceedings initiated on the grounds of trade union membership and activities are dropped;***
- ***false criminal charges against trade union members are dropped and that the concerned workers are compensated;***
- ***trade union members transferred because of their membership or union activities are allowed to return to their previous workplaces.***

The Committee further requests the Government to take the necessary measures to ensure that the members of the complainant organization are not discriminated against in the matter of wages and other benefits and that they are not engaged in the pre-compounding chemical section of the Banbury area of the Arakonam factory in a discriminatory manner. The Committee requests the Government to keep it informed of the outcome of the inquiries carried out.

(b) The Committee requests the labour and judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and emphasizes that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts.

(c) The Committee urges the Government to conduct an independent inquiry without delay into all allegations of interference by the factory management into trade union internal affairs and, if the allegations of the complainant are found to be true, to take all necessary steps to ensure that there are sufficiently dissuasive sanctions imposed so that the management refrains from any further such acts so as to safeguard the independence of any workers' organization at the factory and, in particular, so as to ensure that the complainant organization may carry out its activities freely. It requests the Government to keep it informed in this regard.

(d) The Committee requests the Government to actively consider, in full and frank consultations with the social partners, legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions against acts of anti-union discrimination and interference in trade union internal affairs.

(e) The Committee urges the Government, in consultation with the social partners, to amend the relevant provisions of the Industrial Disputes Act so as to ensure that suspended workers and trade unions may approach the court directly, without being referred by the State Government.

(f) The Committee requests the Government to take appropriate measures to obtain the employer's recognition of the MRF United Workers' Union for collective bargaining purposes. The Committee requests the Government to keep it informed in this respect.

(g) The Committee requests the Government to consider laying down objective rules for the designation of the most representative union for collective bargaining purposes, when it is not clear by which union the workers wish to be represented. It requests the Government to keep it informed in this regard.

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

CASE NO. 2472

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

Complaint against the Government of Indonesia
presented by
— the Building and Wood Workers' International (BWI) and
— the International Confederation of Free Trade Unions (ICFTU)
supported by
— the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF)

Allegations: The complainant organizations allege that, since its establishment, the BWI's affiliate, the All-Indonesian Federation of Wood, Forestry and General Workers' Union (SP Kahutindo), has faced constant harassment and repeated violations of trade union rights by the employer, PT Musim Mas. In particular, it alleges the employer's refusal to recognize the SP Kahutindo; establishment of a rival "yellow"

union by the employer; dismissal of 701 workers and eviction of these workers and their families from their housing on the plantation estate, following a legal strike; non-renewal of contracts of 300 contract workers following the same strike; arrest of six trade union leaders; intimidation, harassment and disciplinary transfer of trade union members and officials. The complainants assert that these violations took place with the complicity of the police forces and that the labour authorities failed to intervene to protect workers' rights

907. The Committee last examined the substance of this case at its November 2006 meeting when it presented an interim report to the Governing Body [see 343rd Report, paras 929–967, approved by the Governing Body at its 297th Session].

908. The BWI transmitted additional information in a communication dated 18 December 2006. The Government furnished new observations in communications dated 8 and 9 March, 29 August and 21 September 2007.

909. Indonesia 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

910. At its November 2006 session, the Governing Body approved the following recommendations in the light of the Committee's interim conclusions [see 343rd Report para. 968]:

- The Committee requests the Government to provide information on the precise representation of both the SP MM and the SP Kahutindo at the time that the bargaining was taking place.
- The Committee requests the Government to conduct an independent investigation into the allegations of anti-union dismissal of Mr. Surya and if they are found to be true, to provide appropriate redress for the damages suffered, including through his possible reinstatement.
- The Committee requests the Government and the complainants to clarify whether the settlement agreement was signed on behalf of all 701 dismissed workers or only 211, the number referred to by the complainant, and to provide a copy thereof. In addition, the Committee requests the Government to carry out an independent investigation immediately into the circumstances under which the settlement agreement with the imprisoned union leaders was reached and to report back on the outcome.
- As regards the allegation of the non-renewal of 300 labour contracts following the strike action, the Committee requests the complainants to provide additional information in response to the Government's assertion that there are no fixed-term contracts at PT Musim Mas.
- As concerns the allegations of physical assault on Mr. Sutari, the Committee requests the Government to institute immediately an independent judicial inquiry into these allegations with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed in this respect.

– The Committee requests the Government to carry out an independent inquiry without delay into the conduct of the various parties during the strike action, including the allegations of injuries suffered by two workers when a company truck drove through the picket line, with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed in this respect.

B. The complainants' additional allegations

911. In a communication dated 18 December 2006, the BWI provided its reply to the Committee's request for additional information in response to the Government's assertion that there were no fixed-term contracts at PT Musim Mas [343rd Report, para. 968(d)]. According to the information obtained by BWI from its affiliate, All-Indonesian Federation of Wood, Forestry and General Workers' Union (SP Kahutindo), the existence of contract workers and daily workers in the enterprise is very clear. Contract workers are mainly employed in the pruning/harvesting and nursery divisions. The BWI attaches company records which indicate the names of workers and their job position; the records show that the company uses the abbreviation "BRG" for "Borongan" which means "outsourcing" next to "Panen" (pruning/harvesting) or "Perawatan" (nursery). The complainant also attaches copies and translations of two fixed-term contracts, one for pruning and one for the nursery, in which it is clearly indicated that the workers in question are employed for a fixed period of time. The contracts provide that these workers are not covered by social security and medical and accident compensation – which is one of the reasons, according to the complainant, why the trade union members went on strike.

912. The complainant adds that, as from 2004, truck drivers and stockers have also become daily workers without any work agreement. For this category of workers, the appointment is only made orally without any issuance of a letter of appointment. They are indicated in the company records by the abbreviation "BHL" (buruh harian lepas/literally translated as "freelance daily worker"). Just like the abovementioned workers, they are not covered by social security and medical and accident compensation.

C. The Government's reply

913. In communications dated 8 and 9 March 2007, the Government indicates that there was an administrative settlement of Mr Sutari's case on the basis of the request of the Manpower Office of the District of Palelawan, while the criminal proceedings initiated by the district police led to a decision by the District Court of Kampar Regency imposing a six-month prison sentence.

914. The Government also indicates that there was no representative from SP Kahutindo in the collective bargaining negotiations for the adoption of the collective labour agreement (CLA). The Musim Mas Workers' Union (SP MM) represents the majority as shown by the list of its members and therefore, it has the right to be the sole representative of the workers in negotiations.

915. The Government also indicates that the case involving Mr Surya caused disadvantage to the company because it had to temporarily stop its activity.

916. Also according to the Government, the process concerning the settlement reached was in line with labour regulations and the settlement covered all the 701 employees involved. The Government attaches a copy of the settlement in the form of a payment invoice.

917. The Government refutes that new employees were hired immediately after the strike, but adds that the company did acknowledge that they hired new employees to replace those

who left work for more than nine days due to the strike. The total number of such workers is 701. The Government considers that contract workers did not exist in the company since they were on strike. Contract labour was recruited long after the strike process had been taken care of by the office responsible for manpower through a mediation process, in view of the need to avoid any delays in delivering orders to buyers.

918. Finally, the Government indicates that, under the agreement between the company PT Musim Mas and the union (represented by the central committee of SP Kahutindo), all the points of contention relative to labour relations were resolved through agreement of the parties on 7 June 2006. The agreement was witnessed by the Manpower Office of Riau Province.

919. In a communication dated 29 August 2007, the Government sent additional information, in particular, a summary of improvements agreed upon between PT Musim Mas and the PT MM trade union in the new collective agreement which covers the period 3 February 2007 to 2 February 2009:

(a) Medical benefits: medical entitlement for out of company clinic treatment for workers and dependants (wife and three children); up to 4.5 months Provincial Sectoral Minimum Wages per year; massage for sprains up to Rp.200 per worker annually (in addition to company clinic which was already provided for in the previous collective agreement).

(b) Maternity benefits: normal childbirth allowance increased by Rp.100,000 (from Rp.400,000 to 500,000); caesarean childbirth allowance increased by Rp.1 million (from Rp.2 million to 3 million); delivery by midwife covered for the first time up to Rp.500,000 per case.

(c) Tertiary education for workers' children: the company undertook to provide scholarships to workers' children in tertiary education.

(d) Bipartite cooperation board: establishment of regular meetings between management and the union to channel aspirations, improve housing facilities, safer work environment and standards of living.

(e) Transportation and accommodation costs borne by company so that four union representatives can meet the Government Manpower Department twice a year.

(f) Severance pay: increases in severance payment in case of termination of employment.

(g) In addition to the above, the company unilaterally provided the following as a matter of policy: increases in survivors' benefit and burial place provided within the plantation; financial assistance for religious celebrations and festivals; establishment of a workers' cooperative to facilitate purchases; supply of rice to workers and their families at the beginning of every month; tools and security apparel provided by the company.

920. The Government also provided details on the case of Mr Marlin Sutari: on 15 January 2005, Mr Sutari and his supervisor had a fight over a warning letter. Mr Sutari punched the supervisor in the face and injured him. The incident was witnessed by several people in the supervisor's office. He was sentenced to six months' imprisonment by the Lower Court of Bangkinang on 7 June 2005. On 28 May 2007, a mutual agreement was signed between Mr Sutari and PT Musim Mas and he was paid severance pay amounting to Rp.3,919,350. The agreement was registered in the Industrial Relations Court and the Lower Court of Pekan Baru on 14 August 2007.

921. The Government also provided details on the case of Hadi Surya: Mr Surya was a security guard and as a result was required to rotate between different posts just like all his colleagues, and had signed an agreement to this effect. On 8 June 2004, he was given a first warning letter as he did not attend martial arts practice. On 29 June 2004, he was given a second warning letter as he did not report for duty from 21 to 23 June 2004. On 5 July 2004, he was given a third warning letter as he did not report for duty from 1 to 3 July 2004. On 10 August 2004, the Labour Department at Pelalawan Regency authorized his dismissal and ordered the payment of compensation amounting to Rp.4,826,775. Mr Surya appealed to the higher court, the Riau Province Committee for Industrial Dispute Settlement (P4D) at Pekan Baru. On 24 February 2005, the P4D authorized PT Musim Mas to dismiss Mr Surya and pay him compensation amounting to Rp.14,658,800. PT Musim Mas appealed to the highest court, the Central Dispute Settlement Committee (P4P) in Jakarta; on 30 May 2005, the P4P authorized the dismissal and ordered the payment of compensation amounting to Rp.6,272,275. On 5 September 2005, a mutual agreement was reached between the parties to accept the P4P verdict. The agreement was registered in the Industrial Relations Court at Pekan Baru on 19 July 2006.

922. The Government forwarded copies of the various settlements signed between PT Musim Mas and SP Kahutindo, including:

(a) Copy of the agreement signed on 7 June 2006 between, on the one hand, PT Musim Mas and, on the other, the SP Kahutindo branch in PT Musim Mas and the Central Board of the SP Kahutindo federation, with regard to 211 of the 701 workers who had not yet accepted the decision of the P4P authorizing their dismissals. According to the agreement, SP Kahutindo accepts the P4P decision of 5 December 2005 authorizing the dismissals of its members and undertakes to call on the remaining workers to accept the decision by signing a mutual agreement. It also accepts the dismissal of the six imprisoned SP Kahutindo leaders following the P4P ruling authorizing the termination of their employment. The parties agree that the outcome of the criminal trial shall be accepted and that all complaints and appeals shall be withdrawn. It is provided that the agreement has been entered into truthfully and without any coercion from any party. The agreement was witnessed by the Indonesian Manpower Office, District of Palalawan, Riau Province.

(b) Copy of a parallel agreement signed the same day, 7 June 2006, in which the company undertakes to pay Rp.250 million to the union as help for the dismissed members.

(c) Copy of the individual settlements signed between the employer and each of the 211 dismissed workers who had not accepted the P4P decision. The agreement provides that the parties accept the termination of employment and the payment of severance pay and that the dismissed worker undertakes to vacate the house he occupied at the latest three days after the signing of the agreement.

(d) Copy of the settlement signed with the imprisoned leaders of the SP Kahutindo branch in PT Musim Mas. The agreement provides that the company acknowledges and accepts the existence of SP Kahutindo in PT Musim Mas and unobstructed freedom of association in PT Musim Mas, whereas the union leaders accept the legal proceedings against them. Both parties undertake not to take any further legal action in the future.

923. The Government forwarded a letter addressed by the management of PT Musim Mas to the Director of the ILO Standards Department pursuant to a visit carried out by the latter to the plantation. In the letter, the enterprise declares that it accepts the existence of

SP Kahutindo in the enterprise and undertakes not to discriminate against the 701 dismissed workers in its consideration and selection of new workers when vacancies arise.

924. The Government forwarded a copy of the decision of the P4P No. 1797/2149/132-12/IV/PHK712-2005 dated 6 December 2005 authorizing the dismissal of 701 workers/members and leaders of the SP Kahutindo branch at PT Musim Mas, for having staged an illegal strike; the strike was found to be illegal because the notification period was not respected and the announced venue had changed; moreover, during the strike, damage was caused to company assets and security guards and managers were injured (nevertheless, the injuries were minor according to Dr Verdini of the local clinic, who testified that the two victims could continue work); the company summoned the workers to return to work on 14, 16, 19 and 20 September 2005; the workers ignored the summons and therefore the company considered that they had resigned as provided for in Act No. 13 of 2003. The company submitted a request for approval of termination to P4P through the Manpower Officers of Pelalawan Regency; the mediator in charge of the case had found that the strike was illegal, however, the decision to approve the termination pertained to the P4P and therefore recommended that the case be submitted to the P4P; with regard to the violation of statutory rights alleged by SP Kahutindo, the mediator found that the union had not provided any evidence of such violations; the P4P granted approval for termination of the 701 workers as of 30 September 2005 and ordered PT Musim Mas to pay severance pay.

925. The Government also forwarded a copy of the decision of the Bangkinang District Court No. 404/PID.B/2005/PN.BKN dated 3 February 2006 sentencing five of the six SP Kahutindo leaders to imprisonment (two years for Robin Kimbi and Masri Sebayang and 14 months for Suyahman Als Yahman, Akhen Pane and Saprudin) for causing damage to company property and injuries to Mr Gunawan Siregar (Personnel Manager) and Mr Dadang Junaidi (security guard) during the strike; the Court took into consideration as attenuating circumstances the fact that the defendants were young, well-behaved during the trial, had dependants and had never been punished before.

926. Finally, in a communication dated 21 September 2007, the Government indicates that all six SP Kahutindo leaders have been released after having served their term. Thus, Messrs Kimbi and Sebayang were released on 2 April 2007 and Messrs Suyahman, Pane, Saprudin and Towo were released on 24 October 2006.

D. The Committee's conclusions

927. *The Committee recalls that this case concerns allegations that, since its establishment, the BWI's affiliate, SP Kahutindo, has faced constant harassment and repeated violations of trade union rights by the employer, PT Musim Mas. In particular, it alleges the employer's refusal to recognize SP Kahutindo; establishment of a rival "yellow" union by the employer; dismissal of 701 workers and eviction of these workers and their families from their housing on the plantation estate, following a legal strike; non-renewal of contracts of 300 contract workers following the same strike; arrest of six trade union leaders; intimidation, harassment and disciplinary transfer of trade union members and officials. The complainant asserts that these violations took place with the complicity of the police forces and that the labour authorities failed to intervene to protect workers' rights.*

928. *The Committee recalls that during the previous examination of this case, it requested the Government to provide information on the precise representation of both the SP MM and the SP Kahutindo at the time that the bargaining was taking place. The Committee takes note of the new information provided by the Government. Based on this information as well as the allegations of the complainants which have not been contested by the Government, the Committee observes that the local union of SP Kahutindo was established*

at PT Musim Mas oil palm plantation and processing plant in October 2004 and registered on 9 December 2004 with 1,183 members out of a total workforce of 2,000, including 300 contract workers. During this period, the enterprise management negotiated a collective agreement with the union which had been previously established in the enterprise, the SP MM; the agreement entered into force on 1 December 2004 and had a duration of two years, until 30 November 2006. The Committee observes that the SP Kahutindo was established in PT Musim Mas three months before the entry into force of this agreement and was registered as a majority union only a few days after its entry into force. The Committee also notes that the enterprise management refused the SP Kahutindo's request to renegotiate the collective agreement and contended that the collective agreement negotiated with the SP MM was valid until its expiration. Finally, the Committee takes note of the last collective agreement negotiated between PT Musim Mas and SP MM for the period 3 February 2007 to 2 February 2009.

929. *The Committee recalls that according to the complainants, the SP MM is a "yellow" union established by the enterprise management in mid-2003 in order to counter the establishment in early 2003 of an initial union in the plantation, the local Indonesian Prosperous Workers' Union (SBSI), which was eventually disbanded by its officers in 2004 due to the harassment they had to face. Among these instances of harassment, the Committee had referred during the previous examination of this case in particular to the transfer of Mr Surya to a new post, situated about 15 km from his house and his subsequent dismissal in July 2004 for absenteeism allegedly as a retaliation measure for his refusal to sign a document stating that he was a member of the SP MM. The Committee recalls in this respect that while authorizing the dismissal of Mr Surya, the P4D found that his transfer to a new post was "improper" and that given the distance to work and the non-provision of transport by the employer, "it was natural that the employee did not report to work as hoped by the employer". Moreover, the P4D did not apparently examine the allegation that his transfer was a retaliatory measure for his refusal to join the SP MM. The Committee further notes from the latest information provided by the Government that after an appeal lodged by PT Musim Mas on 30 May 2005, the P4P authorized the dismissal in the final instance and ordered the payment of compensation amounting to Rp.6,272,275. On 5 September 2005, Mr Surya and PT Musim Mas reached an agreement to accept the verdict.*

930. *The Committee further recalls that during the previous examination of this case, it had focused among the various allegations of harassment against SP Kahutindo members, on those concerning the beating allegedly inflicted upon Mr Marlin Sutari by his superiors and the Chief of Security and his subsequent arrest for assault, as well as the lack of follow-up to the complaint that he filed with the police. The Committee notes that in its latest communication, the Government indicates that there was an administrative settlement of Marlin Sutari's case on the basis of the request of the Manpower Office of the District of Pelalawan; thus, on 28 May 2007, a mutual agreement was signed between Mr Sutari and PT Musim Mas and he was paid severance pay amounting to Rp.3,919,350; on the other hand, the criminal proceedings initiated by the District Police led to a decision by the district court of Kampar Regency imposing upon Mr Sutari a six-month prison sentence for having injured his supervisor.*

931. *The Committee further recalls from the previous examination of this case, that after having gone on strike on two occasions claiming the redress of several violations of statutory rights which had been certified by the local Manpower Office (the Government contests this allegation, indicating that inspections carried out by the labour inspector on 11 and 12 November 2005 and by the Provincial House of Representatives and the Provincial and Regional Manpower Offices on 14 and 15 November 2005, concluded that the company did not violate the minimum labour standards), the SP Kahutindo lodged a third strike notice on 6 September. However, learning of the company's intention to hire replacement*

workers, the union began the strike on 13 September earlier than the announced date. The complainants report that 100 replacement workers were hired by the company, something the Government refutes, stating that replacement workers were not hired during the strike, but only after 701 workers were dismissed for having left work for more than nine days due to the strike. The Committee further notes that on 22 September 2005, the company initiated dismissal proceedings against 701 workers, which were officially authorized by the P4P on 16 December 2005.

932. *According to the complainants, on 26 December 2005, the company employed armed local and paramilitary police to evict workers and their 1,000 family members from the plantation housing estate. However, the Committee also notes from the text of the individual settlements which were signed – pursuant to the agreement of 7 June 2006 between SP Kahutindo and PT Musim Mas – with the 211 of the 701 workers who had not accepted the P4P decision authorizing their dismissal, that one of the terms of the agreement was to return the premises provided by the company within three days, something that does not corroborate the allegations of violent eviction.*

933. *During the previous examination of the case, the Committee had noted that while the complainants alleged the non-renewal of the labour contracts of 300 workers in addition to the dismissal of 701 permanent workers, the Government refuted this allegation by stating that the company did not employ fixed-term contract workers. The Committee notes that in its latest communication, the Government refers to "contract workers" and "contract labour". The Committee also takes note of the latest evidence provided by the complainants in this regard, which shows that fixed-term contract workers are employed in the pruning/harvesting and nursery divisions of the plantation. In addition, drivers are daily workers without a written contract.*

934. *The Committee further recalls from the previous examination of this case, that the Government had not refuted the allegations relating to the following facts: on 15 September 2005, the crowd of workers pushed the refinery gate off of its rails; as a result, the company's management lodged a complaint with the police. Six SP Kahutindo leaders (Messrs Robin Kimbi, Chairperson of the union, Saprudin, Sruhas Towo and Akhen Pane, Vice-Chairpersons, Suyahman, Union Secretary, and Masri Sebayang, Secretary of a branch union) were arrested by the police and charged with violation of article 170 of the Criminal Code. All six trade union leaders have been convicted of crimes against public order for causing damage to persons or property and sentenced to prison terms ranging from between 14 months and two years by the Bangkinang District Court on 3 February 2006 (Mr Towo was sentenced on 17 March 2006). The sentence was confirmed on appeal by the District Court of Riau on 18 April 2006. The Committee notes that according to the Government's communication dated 21 September 2007, all the leaders have now been released after having served their term.*

935. *The Committee further recalls that on 7 June 2006 a settlement agreement was reached between PT Musim Mas and the SP Kahutindo. The Committee notes from the information provided by the complainants and the Government, that the company agreed to pay US$123 (the equivalent of six weeks' salary), to a group of 211 workers who had not accepted the P4P decision authorizing their dismissal; in return for this, the workers undertook to accept the P4P decision and vacate the premises given by the company. The Committee further observes that the complainants alleged that the 211 workers had to drop their right to appeal the illegal dismissals as a result of the settlement. In this respect, the Committee notes that it does not emerge from the facts provided by the complainants that the 211 workers had filed an appeal in the interval between 26 December 2005 when the P4P issued its decision and 7 June 2006 when the settlement was signed. Furthermore, the Committee observes with regard to the complainants' contention that part of this settlement involved a separate written renunciation by the six prisoners of their right to*

appeal their criminal convictions to the Indonesia Supreme Court, that there is no information as to any appeal lodged between the time when the sentence was confirmed on appeal on 18 April 2006 and the signature of the settlement on 7 June 2006 – however, the text of the agreement provided by the Government provides that both parties agree to withdraw any pending legal actions.

936. *While taking due note of the fact that the six SP Kahutindo leaders have now been released, the Committee can only regret the sentencing of these six trade union leaders to heavy prison sentences for derailing of a gate and minor injuries, as well as the fact that the Court seemingly did not take into consideration the industrial context in which these acts occurred among other attenuating circumstances. The Committee recalls that although the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike, all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed.*

937. *Furthermore, while taking due note of the settlements reached between PT Musim Mas and SP Kahutindo and its individual members, the Committee also regrets that the P4P found it appropriate to authorize the dismissals of 701 SP Kahutindo members, including the leaders of the trade union, albeit for a strike which was found to be illegal, without taking into consideration the impact that these dismissals might have on the continuing existence of the trade union in the enterprise. The Committee further regrets the apparent non-renewal of the contracts of another 300 workers who were SP Kahutindo members, allegedly as a result of their participation in the same strike.*

938. *In this respect, the Committee takes note of the letter addressed by PT Musim Mas to the Director of the International Labour Standards Department (forwarded by the Government) in which PT Musim Mas states that it recognizes the existence of SP Kahutindo in the enterprise and that it will not discriminate in the future against the 701 dismissed workers if they seek employment with the company to fill in arising vacancies. The Committee requests the Government to keep it informed of the status of SP Kahutindo in PT Musim Mas and of any future decision by the enterprise to re-employ the members of SP Kahutindo who were dismissed as a result of the strike of 13 September 2005.*

939. *Finally, while taking due note of the various settlements reached between the parties in this case, the Committee can only express regret with regard to the stance of the authorities and, in particular: the fact that none of the bodies responsible for dispute settlement appear to have examined the allegations of anti-union discrimination put forward by the union; the absence of any inquiry into the allegations of violent intervention by the police and the employer during the course of the strike including injuries suffered by two workers when a company truck drove through the picket line and the absence of a Government reply in this regard; the lack of follow-up on the complaint that Mr Sutari allegedly filed with the police and the absence of a Government reply in this regard; the decision of the P4D to authorize the dismissal of Mr Surya although it found at the same time that "it was natural that the employee did not report to work as hoped by the employer".*

940. *The Committee recalls that in a previous case concerning Indonesia, it regretted that the authorities acted uniquely as a mediator without fully investigating the allegations of acts of anti-union discrimination and expressed the expectation that the Government would ensure more comprehensive protection against such acts in the future [Case No. 2451, 343rd Report, para. 926]. The Committee considers that the role of the Government in relation to acts of anti-union discrimination and interference is not confined to mediation and conciliation but also includes, where appropriate, investigation and enforcement in order to ensure effective protection against acts of anti-union discrimination and interference and, in particular, ensure that such acts are identified and remedied, that*

*guilty parties are punished and that such acts do not reoccur in the future. The Committee recalls that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [**Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, para. 820]. The basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [**Digest**, op. cit., para. 818]. The Committee considers finally, that for a settlement to be considered just by all sides, any alleged violations of trade union rights should be fully investigated and elucidated. The Committee once again expresses the firm expectation that the Government will take all necessary measures to establish a mechanism for the examination of allegations of anti-union discrimination and employer interference which is expeditious, inexpensive and fully impartial [**Digest**, op. cit., para 820] and has the confidence of all parties, thus ensuring effective and comprehensive protection against such acts in the future in conformity with Conventions Nos 87 and 98. The Committee requests the Government to keep it informed of developments in this respect.*

941. *The Committee encourages the Government to fully utilize the ILO technical assistance available to it.*

The Committee's recommendations

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

(a) The Committee considers that the role of the Government in relation to acts of anti-union discrimination and interference is not confined to mediation and conciliation but also includes, where appropriate, investigation and enforcement in order to ensure effective protection against acts of anti-union discrimination and interference and, in particular, ensure that such acts are identified and remedied, that guilty parties are punished and that such acts do not reoccur in the future.

(b) The Committee requests the Government to keep it informed of the status of SP Kahutindo in PT Musim Mas and of any future decision by the enterprise to re-employ the members of SP Kahutindo who were dismissed as a result of the strike of September 2005, in conformity with the commitment taken by the company in this regard.

(c) The Committee once again expresses the firm expectation that the Government will take all necessary measures to establish a mechanism for the examination of allegations of anti-union discrimination and employer interference which is expeditious, inexpensive and fully impartial, and has the confidence of all parties, thus ensuring effective and comprehensive protection against such acts in the future in conformity with Conventions Nos 87 and 98. The Committee requests the Government to keep it informed of developments in this respect.

(d) The Committee encourages the Government to fully utilize the ILO technical assistance available to it.

CASE NO. 2494

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

Complaint against the Government of Indonesia presented by the Indonesian Association of Trade Unions (ASPEK Indonesia)

Allegations: The complainant organization alleges that PT Securicor Indonesia, in the context of a merger with Group 4 Falck, refused to enter into negotiations, committed several acts of anti-union discrimination and harassment, including the dismissal of 308 union officials and members and refused to reinstate them in spite of several court orders to that effect. The complainant also alleges repeated summons for interrogation of trade union officers and members by the police and the Prosecuting Attorney and the lack of adequate procedures to enforce workers' rights to freedom of association and collective bargaining

943. The complaint is contained in a communication of the Indonesian Association of Trade Unions (ASPEK Indonesia) dated 28 March 2006.

944. The Government sent its observations in communications dated 8 and 9 March and 21 September 2007.

945. Indonesia 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

946. In a communication dated 28 March 2006, ASPEK Indonesia alleges that the Government violated Conventions Nos 87 and 98 by its acts and omissions concerning the rights to freedom of association and collective bargaining of the employees of PT Securicor Indonesia, which is headquartered in Jakarta. The employees concerned are represented by the Securicor Trade Union of Indonesia, an affiliate of ASPEK Indonesia.

947. According to the complainant, on or about 23 July 2004, PT Securicor Indonesia announced that it would merge with Group 4 Falck. In violation of Convention No. 98 and sections 116 and 136 of Manpower Act No. 13/2003, PT Securicor Indonesia refused to enter into negotiations with the trade union representing its employees with regard to the terms and conditions of employment of the workers in the merged enterprise.

948. On 15 April 2005, in response to the employer's refusal to negotiate for the preceding nine months, the Securicor Trade Union of Indonesia gave written notice to the employer and

the local Office of Manpower, as required by Indonesian law, to the effect that it intended to conduct a strike. Over 600 employees began a strike on 25 April 2005 both in Jakarta and Surabaya. On the following day, in violation of Conventions Nos 87 and 98, section 28 of Act No. 21/2000 Concerning Trade Unions, and sections 143 and 144 of Act No. 13/2003, the employer posted a photograph of the union President Fitrijansjah Toisutta, and a written order that he would not be permitted to enter company premises, in an attempt both to intimidate supporters of the strike, and to deny the union officer the ability to represent members of the union.

949. On 9 May 2005, the employer issued a written list of 35 union members supporting the strike whom the company declared suspended from employment pending a request for termination. On 25 May 2005, the employer, through its attorney, Elza Syarief, issued a written list terminating the employment of 203 union members. These actions by the employer took place in retaliation against employees for exercising their legal right to strike, in violation of Conventions Nos 87 and 98, section 28 of Act No. 21/2000 and section 144 of Act No. 13/2003. On 8 June 2005, the President Director of PT Securicor Indonesia stated, in a letter distributed to all union members and posted in the employer's premises, that the union's request to negotiate the terms and conditions of employment was an attempt to "blackmail" enterprise management and threatened that the company would pursue "civil case[s] for damages" against the strikers and their leadership.

950. Beginning on or about 18 July 2005, the police of the Republic of Indonesia, South Jakarta Office, ordered approximately ten union officers and members supporting the strike to appear for interrogation. Those questioned were asked to identify other union members who supported the strike. The union President Fitrijansjah Toisutta and members Tri Muryanto and Edi Putra were required to return for questioning twice per week for the next two months, and on 7 July 2005 were named as "suspects" for the crime of committing "unpleasant acts" against the company. Beginning on or about 18 August 2005 until 30 September 2005, the same three union members were required to report twice per week for interrogation by the Prosecuting Attorney for South Jakarta concerning the same charges. On 12 December 2005, a court began to hear charges against Mr Toisutta. The trial was subsequently suspended but the charges were still pending at the time of the complaint. According to the complainant, the above are contrary to Conventions Nos 87 and 98 as well as national legislation (section 143 of Act No. 13/2003).

951. According to the complainant, beginning on or about 25 April 2005 and up until the time of the complaint, the employer had attempted to coerce and intimidate union members supporting the strike by making phone calls to spouses and other family members and telling them to convince strikers to return to work. During the same period, selected strikers were offered special jobs with the company if they would return to work and tell others to do the same. According to the complainant, the above are contrary to Conventions Nos 87 and 98 as well as national legislation (section 144 of Act No. 13/2003).

952. The complainant adds that the Securicor Trade Union of Indonesia participated in mediation meetings with the local Office of Manpower regarding the industrial dispute which resulted in a written recommendation, on 8 June 2005, No. 3447/-1.835.5, recommending that the company reinstate all workers to their previous positions. The employer refused to implement the mediator's recommendation, prompting the union to file a complaint before the National Dispute Resolution Committee (P4P). On 18 July 2005, the P4P ruled that the strike was legal and that the employer should rehire all terminated union members to their former positions. The P4P did not, however, provide redress for any of the other violations committed by the employer and did not even invoke the Indonesian law that addresses freedom of association (Act No. 21/2000). The employer refused to implement the order of the P4P and appealed the decision to the High Court for

State Administrative Affairs. In a decision, of 12 January 2006, No. 248/G/2005/PT.TUN.JKT, the High Court for State Administrative Affairs rejected the challenge and upheld the P4P's recommendation. The employer again refused to implement the decision and on 30 January 2006 filed an appeal at the Supreme Court of Indonesia. In the meantime, 238 workers remained illegally terminated pending the court appeal.

953. Indonesian law (section 155 of Act No. 13/2003) mandates that employers continue to pay wages to workers while a labour dispute is in process. On 8 August 2005, the workers who had been on strike asked the Central Jakarta State Court to order the company to comply with its legal obligations to pay wages to the illegally terminated workers. The Central Jakarta State Court found in the workers' favour on 15 August 2005 and, for purposes of implementation of the judgement, transferred the case to the South Jakarta State Court, in whose jurisdiction the company is located. Although the company paid two months of back wages (May–June 2005), it failed to pay the remaining owed wages and continued to withhold wages in violation of Indonesian law. On 2 February 2006, the workers requested that the Central Jakarta State Court issue a "fiat of execution" for the back wages for July 2005–January 2006. On 6 February 2006, the court ruled in favour of the employees and, on 7 February 2006, it passed the case on to the South Jakarta State Court for implementation. On 17 February 2006, the South Jakarta State Court passed an *Aanmaning* telling the company to pay the back wages; however, the court failed to issue a formal order. The judge stated that he did not believe that all of the wages needed to be paid despite the order from the Central Jakarta State Court. On 9 March 2006, the workers' lawyers asked the South Jakarta State Court to seize the company's assets to pay the back wages. They were still awaiting a response at the time of the complaint. Also on 9 March 2006, the workers reported the failure of the South Jakarta State Court to implement the order to the Judicial Commission which oversees the judiciary. However, upon arriving to file their complaint, they were informed that the Commission had already received an explanation of the court's decision. The workers found it quite improper that the Commission received an answer to a complaint that had not been filed yet and that the answer came from the company's attorney rather than from the court itself. The representative of the Commission went on to insult the workers, saying that their understanding of the matter was at kindergarten level while the understanding of the company's attorney was based on his law degree.

954. The complainant adds that the Indonesian judicial system suffers from endemic corruption, citing in support of its allegation reports and findings made by PriceWaterhouseCooper, Transparency International, the Political Risk Services Group, the World Bank, the United States State Department, Human Rights Watch and the International Commission of Jurists. According to the complainant, the failure of the judiciary to enforce the rule of law is particularly severe in labour cases like the one concerning PT Securicor Indonesia as business interests frequently influence the outcome of court cases due to corruption. Supreme Court decisions have historically been adverse to unions and the appeals process entails significant delays and continues to be used by employers in order to forestall, if not avoid, the enforcement of labour rights.

955. Furthermore, citing Human Rights Watch and the United States Department of State, the complainant alleges that arbitrary detentions and discriminatory criminal prosecutions like those suffered by the union President Fitrijansjah Toisutta are widespread. Although Indonesia has made significant steps toward democracy, there has been a resurgence in the last years in the power of the military over social and political affairs as well as disturbing signs of a return to criminalization of dissent. Although the Indonesian Criminal Procedure Code contains provisions against arbitrary arrest and detention, the Code lacks adequate enforcement mechanisms and is routinely violated by the authorities. In particular, labour activists have repeatedly been targeted for interrogation, arrest, detention and prosecution.

The police and military continue to intervene in labour matters, to protect employers' interests.

956. The complainant also refers to previous cases concerning Indonesia which have been examined by the Committee on Freedom of Association and in which the Committee concluded that the Government had failed to provide "expeditious, inexpensive and fully impartial" means of redress for violations of freedom of association rights [Case No. 2336, 336th Report, paras 498–539; Case No. 2236, 336th Report, paras 68–78, 335th Report paras 909–971]. The complainant also referred to previous cases involving illegal interrogation, detention and criminal prosecution by the Indonesian authorities [Case No. 2116, 326th Report, para. 357; Case No. 1773, 297th Report; Case No. 1756, 295th Report]. The complainant adds that, although the recommendations of the Committee on Freedom of Association in these cases have helped bring about several positive reforms in the labour law of Indonesia, the formal legal changes have failed to translate into labour rights in practice. Increased involvement by the ILO is critical if the formal improvements are to have any real impact.

957. In conclusion, the complainant requests the Committee to advise the government to: (i) enforce the decision of the P4P and the High Court for State Administrative Affairs in accordance with the order to the State Court of Central Jakarta; (ii) order the employer to reinstate all union members terminated for supporting the strike, with full back pay and benefits necessary to make whole those union members who were terminated for the period they had been without employment at PT Securicor Indonesia; further instruct the employer that all union members terminated or "transferred" to another company (Group 4 Falck Indonesia) shall receive five times the amount of severance pay, reward pay for period of employment and compensation pay for entitlements that have not been used, according to what is stipulated under section 156 of Act No. 13/2003 for all previous years of service to PT Securicor Indonesia; (iii) order the employer to enter negotiations aimed at reaching a collective bargaining agreement with regard to the terms and conditions of employment in the newly merged company; (iv) order the Indonesian police and Prosecuting Attorney to stop criminalizing union activities and specifically, to stop the harassment, coercion and intimidation of union members by calling them for interrogation; (v) drop all charges against Fitrijansjah Toisutta and other union members for "unpleasant acts" against the employer for participating in a legal strike.

B. The Government's reply

958. In communications dated 8, 9 March and 21 September 2007, the Government indicates that as a result of the merger between PT Securicor Indonesia and Group 4 Falck in July 2004, 308 workers from a total of 600 workers of PT Securicor Indonesia (284 from Jakarta and 24 from Surabaya) refused the company's proposal to include them under the new management by transferring them to Group 4 Falck. Since the workers refused to join the new management, the employer terminated their employment. The termination was approved by the P4P. As there was no agreement, since 26 April 2005, the workers started a strike and demonstration within the company area, at the office of the Ministry of Manpower and Transmigration and the DPR (Parliament) building. The Manpower Office of Jakarta Province handled this case but as there was no agreement, the mediator gave its advice to the employer of PT Securicor Indonesia to reinstate Mr Hendy and other workers and consequently pay their wages for May 2005. The employer refused and the case was filed before the P4P on 16 June 2005. On 29 June 2005, the P4P confirmed the advice of the mediator to reinstate the workers and asked the employer to pay their wages for May–June 2005. In response to the decision of the P4P, the employer appealed to the High Court for State Administrative Affairs (PTTUN) of Jakarta and, on 12 January 2006, the court decided to reject the appeal and reaffirm the decision of the P4P. Subsequently, the employer filed another appeal to the Supreme Court in a last effort to invalidate the

decision. This process prevented the payment of severance pay as long as the issue was pending before the Supreme Court. As a result, the workers staged another demonstration before the Office of the Ministry of Manpower and Transmigration, the Parliament and the Supreme Court. On 19 May 2006, the Supreme Court decided to reject the appeal and confirmed the P4P decision. Both parties accepted the decision and, on 27 December 2005, the employer reinstated the 24 workers and paid their wages accordingly. The Ministry of Manpower and Transmigration made various efforts to settle the dispute in coordination with other institutions such as Parliament and the Supreme Court. On 28 July 2006, the dispute was legally settled through an agreement between PT Securicor Indonesia and the workers concerned. The terms of the agreement are the following:

– both sides agreed to terminate the working relationship;

– the severance pay was agreed as follows:

  (i) double compensation payment based on section 156, paragraph 2, of Act No. 13/2003;

  (ii) appreciation compensation based on section 156, paragraph 3, of Act No. 13/2003;

  (iii) replacement of right based on section 156, paragraph 4, of Act No. 13/2003 (including wages owed during the waiting period before the court decision was issued);

  (iv) additional extra fee based on the company's policy.

According to the Government, all workers signed the agreement and accepted the payment while the representative of the workers asked for an excuse and thanked the Government for the assistance provided.

C. The Committee's conclusions

959. *The Committee recalls that this case concerns allegations that PT Securicor Indonesia, in the context of a merger with Group 4 Falck, refused to enter into negotiations with the trade union over terms and conditions of employment in the merged enterprise, which led to a strike by more than 600 workers as of 25 April 2005. Pursuant to this, the employer committed several acts of anti-union discrimination and harassment, including: preventing the union president and officials from entering company premises; dismissing 238 union officials and members in May 2005, refusing to reinstate them in spite of several court orders to that effect; and attempting to coerce and intimidate union members by calling their families. The complainant also alleges that the union President Fitrijansjah Toisutta and members Tri Muryanto and Edi Putra were repeatedly summoned for unwarranted interrogation by the police and the Prosecuting Attorney; that they were charged on 7 July 2005 with the crime of committing "unpleasant acts" against the company and that their case is pending before the courts; that the judiciary systematically favours employers; and that the legislation lacks adequate procedures to enforce workers' rights to freedom of association and collective bargaining.*

960. *The Committee observes from the complainant's allegations and the Government's reply that: (i) 308 workers were dismissed by PT Securicor Indonesia in May 2005 for having staged a strike as of 25 April 2005; (ii) all instances, including the P4P, the High Court for State Administrative Affairs and the Supreme Court found that the strike which began on 25 April 2005 was legal and that the employer should reinstate the dismissed workers and pay wages owed; (iii) 24 workers were reinstated on 27 December 2005 pursuant to the*

order issued to that effect by the Supreme Court after hearing the case in the last instance; (iv) on 28 July 2006 the two parties reached an agreement by which they agreed to terminate the employment relationship between the enterprise and the workers concerned, in return for payment of full compensation.

961. *While taking due note that the two parties have finally reached a settlement agreement, the Committee wishes to recall that no one should be penalized for carrying out or attempting to carry out a legitimate strike [**Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 660]. In this respect, the Committee requests the Government to specify the circumstances under which only 24 out of 308 workers were finally reinstated pursuant to their dismissal for having participated in the strike which began on 25 April 2005.*

962. *The Committee further notes with regret that the Government does not reply to the complainant's allegations concerning the repeated summons of the union President Fitrijansjah Toisutta and members Tri Muryanto and Edi Putra for interrogation by the police and the Prosecuting Attorney as well as the pressing of charges against them on 7 July 2005 for the crime of committing "unpleasant acts" against the company. The Committee recalls that measures depriving trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights [**Digest**, op. cit., para. 63]. The apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights [**Digest**, op. cit., para. 68]. Recalling that the strike which began on 25 April 2005 was declared legal by the competent authorities, the Committee emphasizes that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike [**Digest**, op. cit., para. 672]. The Committee requests the Government to indicate whether the charges brought against the union President Fitrijansjah Toisutta and members Tri Muryanto and Edi Putra for committing "unpleasant acts" against the company are pending before the courts or whether the charges have been dropped. In the event that this matter is still before the courts, the Committee requests the Government to institute an independent inquiry into this matter and, if it is found that the charges were brought for having organized or participated in the peaceful strike which began on 25 April 2005, to ensure that they be dropped immediately and to keep it informed of developments in this respect.*

963. *The Committee also notes with regret that the Government does not reply to the allegations concerning acts of harassment against union members and their families, including phone calls at their homes by the company, in the context of the merger between PT Securicor Indonesia with Group 4 Falck and the new management's refusal to negotiate the terms and conditions of employment of the employees, as well as the transfer of a certain number of the employees under new management. The Committee recalls that the Government's obligations under Convention No. 98 and the principles on protection against anti-union discrimination cover not only acts of direct discrimination (such as demotion, dismissal, frequent transfer, and so on), but extend to the need to protect unionized employees from more subtle attacks which may be the outcome of omissions. In this respect, proprietorial changes should not remove the right to collective bargaining from employees, or give rise to direct or indirect threats against unionized workers and their organizations [**Digest**, op. cit., para. 788]. Furthermore, acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize [**Digest**, op. cit., para. 786].*

964. *Finally, the Committee notes with regret that the Government does not reply to the serious allegations made with regard to the Government's failure to ensure an effective mechanism of protection against acts of anti-union discrimination. The Committee also notes with concern that this is the fourth case recently brought before it, in which the Government focuses in its reply exclusively on the settlements reached pursuant to mediation by the labour authorities, and omits any reference to investigations aimed at verifying and remedying the alleged acts of anti-union discrimination [Case No. 2336 (336th Report, paras 498–539, at 534); Case No. 2451 (343rd Report, paras 906–928, at 926); and Case No. 2472 (348th Report paras 907–942)]. While acknowledging the importance of mediation in finding commonly acceptable solutions to labour disputes, the Committee also recalls that, where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should, when necessary, be accompanied by measures which include the protection of workers against anti-union discrimination in their employment [**Digest**, op. cit., para. 814]. The basic regulations that exist in national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [**Digest**, op. cit., para. 818]. The Committee therefore urges the Government to take steps, in full consultation with the social partners concerned, including through the adoption of legislative measures to ensure comprehensive protection against anti-union discrimination in the future, providing for swift recourse to mechanisms that may impose sufficiently dissuasive sanctions against such acts.*

965. *The Committee encourages the Government to fully utilize the ILO technical assistance available to it.*

The Committee's recommendations

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

(a) Recalling that no one should be penalized for carrying out or attempting to carry out a legitimate strike, the Committee requests the Government to specify the circumstances under which only 24 out of 308 workers were finally reinstated pursuant to their dismissal for having participated in the strike which began on 25 April 2005. Also, noting that legislation must establish sufficiently dissuasive sanctions against acts of anti-union discrimination to ensure the practical application of Articles 1 and 2 of Convention No. 98, the Committee requests the Government and the complainant to give their views on whether the payment received by the workers on the basis of the agreement of 28 July 2006 is apt to serve as a sufficiently dissuasive sanction against any future acts of anti-union discrimination by the employer.

(b) The Committee requests the Government to indicate whether the charges brought against the union President Fitrijansjah Toisutta and members Tri Muryanto and Edi Putra for committing "unpleasant acts" against the Securicor/Group 4 Falck company are pending before the courts or whether the charges have been dropped. In the event that this matter is still before the courts, the Committee requests the Government to institute an independent inquiry into this matter and, if it is found that the charges were brought for having organized or participated in the peaceful strike which

began on 25 April 2005, to ensure that they be dropped immediately and to keep it informed of developments in this respect.

(c) The Committee once again urges the Government to take steps, in full consultation with the social partners concerned, including through the adoption of legislative measures to ensure comprehensive protection against anti-union discrimination in the future, providing for swift recourse to mechanisms that may impose sufficiently dissuasive sanctions against such acts.

(d) The Committee encourages the Government to fully utilize the ILO technical assistance available to it.

CASE NO. 2492

DEFINITIVE REPORT

Complaint against the Government of Luxembourg presented by the Professional Association of Agents of the Central Bank of Luxembourg (A-BCL)

Allegations: The complainant organization, legally set up in July 2004, and representing more than 75 per cent of all agents of the Central Bank of Luxembourg (agents with public law status), alleges that the authorities refuse to grant it the necessary approval to guarantee the collective defence of its members' interests, despite a number of requests on this matter since October 2004

967. The initial complaint is contained in a communication from the Professional Association of Agents of the Central Bank of Luxembourg (A-BCL) dated 1 June 2006 and has been supplemented by communications dated 10 August and 20 December 2006.

968. The Government of Luxembourg transmitted its reply in communications dated 19 July, 24 November and 28 December 2006.

969. The Government of Luxembourg 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 complainant organization's allegations

970. The A-BCL alleges that the Government has failed to respect its commitments with respect to freedom of association, especially those it has made under Conventions Nos 87 and 151; above all, it has prevented the A-BCL from fulfilling its trade union role of promoting and

defending the interests of the agents and employees of the Central Bank of Luxembourg (BCL).

971. The A-BCL was set up on 14 July 2004, in accordance with the amended Act of 21 April 1928 on non-profit associations and foundations. Its aim is the collective defence of the professional, social, moral and material interests – in the broader sense of the term – of its members who are all agents of the BCL; it also acts as their occupational representative vis-à-vis the BCL management and within any other official body of concern to its members. The A-BCL statutes were published in *Memorial C*, No. 964 of 28 September 2004, pages 46236–46238 and, from that time on, has had legal personality in accordance with the provisions of section 3 of the amended Act of 21 April 1928 on non-profit associations and foundations in Luxembourg. This legal personality entitles it to all legal rights of a subject of law, such as the rights to take court action and benefit from the application of legal provisions concerning its organization and functioning. The A-BCL membership includes 153 agents – out of a total of 198 agents working for the BCL. It is the only trade union association within the BCL and therefore the only possible partner for social dialogue with the BCL management. Accordingly, its representativeness within the BCL cannot be called into question.

972. Agents working for the BCL have the status of government employees under the legislation of Luxembourg, ensuing from the amended Act of 27 January 1972 establishing rules for government employees; they have the same public law status as civil servants. In the area of staff representation, the public service has a particular status. In ministries, administrations and public institutions, staff representative bodies are freely set up by their constituent members alone, without any interference on the part of the Government. It is for this reason that section 36 of the amended Act of 16 April 1979, establishing the legal status of civil servants (Act of 1979), introduced a mechanism whereby the most representative body is granted ministerial authorization to defend the staff's interests. Section 36 reads as follows: "Occupational associations within administrations, service industries and state institutions may be authorized, under an Order from the competent minister, to represent the staff on whose behalf they are acting." The system introduced by section 36 is certainly the most democratic possible, in that freedom of association is fully respected by the regulations pertaining to it.

973. Under section 11(1) of the Act of 23 December 1998 concerning the monetary status and the BCL, "the Board of Directors is the higher executive authority of the Central Bank". Consequently, the competence granted to the competent minister under section 36, i.e. to grant authorization to an organization called upon to guarantee the collective defence of its members' interests, is incumbent, in the case of the BCL, upon the management of this bank. On 4 October 2004, the A-BCL requested the management of the BCL to grant it authorization to represent the occupational interests of its members. At the time of the complaint, the BCL management had still failed to communicate an actual decision concerning the request for the abovementioned authorization – either to say that the requested authorization had been granted or to say that it had been refused on legal grounds.

974. In a letter enclosed with the complaint, submitted on 23 March 2005 to the Minister of Finance – who is supervisory minister of the BCL in all areas – with the exception of financial matters over which the BCL has full autonomy, the A-BCL complained about the lack of reaction from the BCL management and requested the Minister to approach the management so that it might grant the authorization requested, as all the legal conditions for obtaining it were fulfilled. However, there was no reply to this letter. The A-BCL then decided to approach the Ministerial Council on 21 July 2005 (document enclosed). The Minister of Finance finally replied, on behalf of the Ministerial Council of the Grand Duchy of Luxembourg, in a letter dated 31 October 2005; in the first place, it disputed the

A-BCL's right to act collectively as an occupational association on the legal grounds raised and pointed out that the complaint was unfounded, given that section 36 of the Act of 1979 merely left it up to the BCL management to grant authorization but did not make it an obligation (document enclosed). At the time of this complaint, the A-BCL had not obtained the approval it had requested from the BCL management on 4 October 2004 who, moreover, refused to recognize it as the occupational representative of BCL agents. According to the complainant organization, this situation was intolerable; although it fulfilled all the legal requirements to obtain recognition as occupational representative of BCL agents, it had still not, two years after its establishment, been officially acknowledged by the BCL board of directors, and the Government had not taken any steps to make up for this shortcoming.

975. This failure of the BCL management to recognize the A-BCL was even more serious, given that one of the members of the A-BCL's administrative council had recently been dismissed by the BCL management; at that time, he had been both vice-chairperson and secretary of the A-BCL and, as such, should have been protected by the legal ban to dismiss a delegate of BCL agents. The A-BCL management, to justify that this dismissal of the A-BCL official had been legal, stated that it was not bound to respect any ban because the A-BCL had not been recognized. The A-BCL then rightly surmised that the management had deliberately avoided recognizing the A-BCL as an official representative of BCL agents so that it could dispense with any legal protection for a BCL staff representative.

976. The A-BCL is of the opinion that "ministerial authorization" is supposed to acknowledge the representative nature of the occupational association making the request. If staff organizations are set up and enjoy a certain representativeness, and especially if – as in the present case – only one staff representative body exists in a specific public establishment or institution, the higher authority is bound to grant authorization. However, according to the A-BCL, this authorization was duly refused, without any legal grounds being given for this refusal. Even worse, the Government, by handing down an interpretation that was not in accordance with principles in administrative law and by refusing to exert its power of supervision over the BCL management to ensure that it grant the authorization requested by the BCL since October 2004, implicitly approved this illegal refusal on the part of the BCL management and contravened its commitments undertaken under Conventions Nos 87 and 151. In particular, the Government has given a wrong interpretation of section 36, by stating that the granting of authorization by the higher authority of the BCL is merely an option, left to its own judgement and "discretion" (letter from the Government of 31 October 2005, enclosed with the complaint). According to the complainant organization, the Government is unaware of the meaning and scope of the provisions of section 36. In fact, the rules governing the application of this legal provision are as follows: section 36 of the Act of 1979 must not be applied literally, because an interpretation of this nature would be tantamount to granting a discretionary power to the authority called upon to grant authorization to the applicant occupational organization. However, the aim of Convention No. 87 is to avoid any decision of an arbitrary nature in the recognition of occupational associations called upon to defend the collective interests of their members. The interpretation of section 36 by the Government, as well as its support for the position adopted by the BCL management, are therefore contrary to the objectives of Convention No. 87 and constitute a violation of its principles.

977. In a communication dated 10 August, the complainant organization informs the Committee that it wishes to uphold its complaint because, even though the BCL had granted it authorization to represent the staff, its practical application by the BCL was continuing to cause a problem. According to the A-BCL, the BCL had indeed, under political pressure from the competent minister and as a result of the complaint submitted by the A-BCL to the ILO, granted its authorization for the A-BCL to be the representative of BCL agents, in

a decision handed down on 15 June 2006. As far as the A-BCL was concerned, the conditions under which this authorization had been granted and continued to be applied did not satisfy it, neither did they satisfy its umbrella organization, the General Confederation of the Public Service (CGFP). According to the A-BCL, the BCL management's decision is an attempt to undermine the approval that had been granted under political and trade union pressure, by trying to persuade the legislator to amend the framework agreement setting up the BCL, especially with a view to reducing the powers of this trade union organization.

978. The CGFP also took a position on the BCL management's decision of 15 June 2006 in a communication sent to the management on 19 July 2006. This communication, enclosed with the complaint, severely criticized, according to the complainant organization, the initiative taken by the BCL management, claiming that it made a mockery of the trade union rights of the A-BCL; it also criticized the practical application of the authorization granted. As long as the bill put forward by the BCL management has not been withdrawn or scrapped, and as long as it has not received guarantees that its trade union activity will not be questioned by the BCL management, the A-BCL is seriously concerned at the free exercise of its trade union activity in the future.

979. In its communication, the A-BCL encloses the letter of 15 June 2006 in which the BCL granted its authorization. In this letter, the BCL states that discussions on this issue had been held with the Government and that on 2 May 2006, the minister entrusted with relations with the BCL had reconfirmed that the management of the bank alone was competent to grant authorization; indeed, it was purely a matter for the bank's discretion. The BCL management stressed in its communication that it was sorry about the dispute that had arisen around this request as it had always sought to guarantee a social and constructive dialogue within the BCL; its concern was to allow a real representation of all groups of employees within the bank by representatives selected by secret ballot in which all agents of the BCL might participate. This proposal to organize elections was also contained in a bill submitted by the BCL to the Government. Since the BCL management continued to believe that the legal situation for the exercise of staff representation at the BCL was not clear, as the present law stood, it had striven and would continue to strive for an intervention on the part of the legislator to remedy this shortcoming.

980. A letter sent by the CGFP to the BCL on 19 July 2006 is also enclosed with the A-BCL's communication of 10 August, in which the CGFP reacts to the letter from the BCL. The CGFP alleges that a number of statements made by the BCL are unacceptable because they distort the actual situation. In particular, the BCL management stipulated in its letter of 15 June 2006 that it "confirms its recognition of the A-BCL as staff representative". According to the CGFP, the A-BCL believed that the BCL does not recognize the A-BCL as representing the BCL staff, as it has done everything to thwart its trade union action by refusing it authorization for nearly two years. Furthermore, the BCL states that its management had, from 1999 onwards, recognized the A-BCL as "its negotiator in social dialogue". The CGFP wonders how the BCL management intended undertaking social dialogue with a social partner that it had always refused to recognize officially. Furthermore, the BCL management's interpretation of the provisions of section 36 of the law establishing the legal status of civil servants, does not tally with the principles regulating the application of this text. The CGFP considers it unacceptable that the BCL management is trying, through an amending bill that it has put forward, to limit the A-BCL's scope of action and interfere unduly in the domain of the Minister of the Public Service representing the Government and its social partner, the CGFP. The Confederation points out that it is firmly opposed to any amendment of the Act of 23 December 1998, that would limit the A-BCL's scope of action, thereby undermining its trade union rights. Indeed, Conventions Nos 87, 98 and 151 establish freedom of association, collective bargaining and trade union action as fundamental principles. The BCL management's

initiatives clearly set out to restrict the free application of these fundamental freedoms with respect to the A-BCL; they are clearly made with malicious intent because they were undertaken without the knowledge of the staff representatives, i.e. without any previous consultation or dialogue, and therefore flagrantly infringe the legal provisions and regulations on dialogue and social partnership.

B. The Government's reply

981. In a communication dated 19 July 2006, the Government informs the Committee that the BCL management has authorized the A-BCL to represent the staff, in accordance with section 36 of the amended Act of 16 April 1979, establishing the legal status of civil servants. This agreement had been granted after an intervention by the Minister of the Public Service and Administrative Reform and the Minister of the Treasury and Budget. The Government points out that it was therefore not a party to blocking social dialogue and that it had fully respected its obligations under ILO Conventions.

982. In a communication dated 24 November 2006, the Government stated that it was extremely surprised that the A-BCL was continuing with the case. The Luxembourg Minister of Finance (supervising minister) and Minister of Labour consider that it is not up to the Government to take position. The accusations made by the A-BCL in its letter of 10 August 2006 do not concern an infringement of international labour Conventions by the Government and Luxembourg legislator, or of any judicial actions and deeds. They merely allude to intentions (moreover merely guessed at) on the part of the BCL management. The Government considers that both its law and practice are in conformity with the international labour Conventions mentioned.

983. In a communication dated 28 December 2006, the Government points out that the dispute in question is not about a legal text in force or in the process of being adopted, but is exclusively about assertions, based to a large extent on assumptions rather than facts, against a single enterprise and the way it might apply a text, whether already existing or being voted upon. The Government holds the view that the Committee is not competent to take a decision on documents that only incriminate possible future action on the part of the management. As far as the substance of the case is concerned, the Government adds, entirely incidentally, that no reference is made to the fact – neither is it a fortiori proven – that the text in force or being drafted is contrary to international labour standards. Incriminations against the BCL management are virtual; they have no substance and have not been proven.

C. The Committee's conclusions

984. *The Committee notes that the A-BCL, legally set up in July 2004 and representing more than 75 per cent of all the agents of the BCL, alleges that the authorities refused to grant it the necessary authorization to defend the collective interests of its members, despite several requests on this matter since October 2004. The complainant organization also alleges that the BCL is trying, by means of an amending bill, to limit the A-BCL's scope of action.*

985. *The Committee notes that the three communications from the Government are short, stipulating that: (1) authorization was granted in 2006; (2) the A-BCL's allegations are based merely on the supposed intentions of the BCL; and (3) the dispute in question is not about a legal text in force or being adopted, but exclusively about assertions, to a great extent based on assumptions rather than facts, against an isolated enterprise on its possible way of applying a text, whether already existing or in the process of being voted. The Government insists that it has not infringed ILO Conventions.*

986. *The Committee notes that the A-BCL is a legally established organization with legal personality. It notes that section 36 of the amended Act of 16 April 1979, establishing the legal status of civil servants (Act of 1979), stipulates that "occupational associations within administrations, service industries and state institutions may be authorized, under an Order from the competent minister, to represent the staff on whose behalf they are acting" and that the A-BCL requested this authorization on 4 October 2004. The Committee notes that the A-BCL considers that section 36 does not give the competent minister the right to grant authorization, but that the latter must grant authorization if the association is representative and has been legally established. The Committee notes that the Government gives a different interpretation of this section (letter enclosed with the A-BCL's complaint), considering that section 36 states that granting an association authorization to represent staff is a purely discretionary matter left up to the BCL management. The Committee notes that the authorization was finally granted to the A-BCL on 15 June 2006.*

987. *The Committee notes, however, that despite the position expressed by the BCL in its letter to the complainant, stressing that it had recognized the A-BCL as negotiator within the framework of social dialogue since the bank had started operating in 1999, consulting it regularly on all matters within its fields of competence and organizing regular meetings with its administrative council, the complainant organization alleges that it had not been able to work in the interest of its members because it had not been granted authorization. Indeed, according to the complainant organization, one of the members of the A-BCL governing council had been dismissed by the BCL management, while he was vice-president and secretary of the A-BCL, when he should have benefited from the legal ban to take such steps against a delegate of BCL agents. The BCL management justified the legal nature of the measure taken against the A-BCL official by stating that it had not been bound to respect any legal ban because the A-BCL had not been recognized.*

988. *The Committee considers that if authorization really creates rights for the organization, this authorization should not be granted in a discretionary manner. The Committee recalls that employers, including governmental authorities in the capacity of employers, should recognize for collective bargaining purposes the organization's representative of the workers employed by them and that recognition by an employer of the main unions represented in the undertaking, or the most representative of those unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 952 and 953]. The Committee requests the Government to review section 36 of the Act of 1979 in consultation with the social partners concerned, if it is found that this provision allows for discretionary power in the granting of authorization so as to bring it into conformity with the Convention.*

989. *The complainant organization expresses its concern over future professional relations in the Bank, on the basis of several assertions made by the BCL management. As stated in a letter from the BCL enclosed with the complaint, the BCL management expresses its regret that the dispute surrounding the request for authorization had arisen. It had always sought to guarantee a social and constructive dialogue within the BCL, and its concern was to allow an effective representation of groups of employees at the bank by representatives elected by secret and direct ballot, in which all BCL agents might participate. The BCL explains that it continues to believe that the judicial situation with respect to staff representation at the BCL is not, as the legislation now stands, clear, and for this reason it had always striven – and will continue to strive – for an intervention on the part of the legislator to remedy this shortcoming.*

990. *The CGFP considers, in a letter in reply to the BCL enclosed with the complaint, that their initiatives limit the free application of basic freedoms within the A-BCL and is of malicious*

intent, given that these steps were taken without the knowledge of the staff representatives, i.e. without any previous consultations or dialogue, thereby flagrantly infringing legal provisions and regulations concerning dialogue and social partnership.

991. *The Government for its part states that the dispute in question is not about a legislative text in force or in the process of being adopted, but is merely based on assertions, to a great extent based on assumptions rather than facts, against a single enterprise and its possible way of applying the text, whether this actually exists or is being voted.*

992. *The Committee considers that the information provided does not call for further examination. Nevertheless, the Committee notes the allegations according to which the BCL management would like to organize elections of worker representatives, in which all BCL agents could participate. In this respect, the Committee recalls that the Workers' Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), also contain explicit provisions guaranteeing that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade union concerned and it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers [see* ***Digest****, op. cit., paras 946 and 1075].*

The Committee's recommendation

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

The Committee requests the Government to review section 36 of the Act of 1979 in consultation with the social partners, if it is found that this provision allows for discretionary power in the granting of authorization so as to bring it into conformity with the Convention.

CASE NO. 2317

INTERIM REPORT

Complaints against the Government of the Republic of Moldova presented by
— the Federation of Trade Unions of Public Service Employees (SINDASP)
— the Confederation of Trade Unions of the Republic of Moldova (CSRM)
— the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND)
supported by
— the International Confederation of Free Trade Unions (ICFTU)
— the General Confederation of Trade Unions (GCTU)
— International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and
— Public Services International (PSI)

Allegations: The complainants allege that the public authorities and employers interfere in the internal matters of their organizations and pressure their members to change their affiliation and become members of the trade union supported by the Government

994. The Committee last examined this case at its June 2006 meeting [see 342nd Report, paras 838–878]. The Confederation of Trade Unions of the Republic of Moldova (CSRM) sent new allegations in communications dated 27 July and 9 October 2006, and 6 March 2007. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) submitted additional allegations by a communication dated 29 January 2007.

995. The Government sent its observations in communications dated 13 September and 29 December 2006, 13 and 19 March, 22 May and 24 September 2007.

996. The Republic of Moldova 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

997. At its June 2006 meeting, the Committee made the following recommendations in relation to this case [see 342nd Report, para. 878]:

(a) The Committee expects that legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions will be soon adopted following full and frank consultations with social partners, including the Confederation of Trade Unions of the Republic of Moldova (CSRM) and the National Confederation of Moldovan Employers. It further expects that the measures taken by the Government in this regard will not only address violations of the Labour Code, but also other laws concerning freedom of association and collective bargaining rights, such as the Law on Trade Unions. The Committee requests the Government to keep it informed of the developments in this respect.

(b) The Committee once again requests the Government to conduct independent investigations into the allegation of the employers' refusal to accept the establishment of trade unions at the Ecological College and the Lyceum "Mircea Eliade" and to keep it informed in this respect.

(c) The Committee requests the Government to indicate whether all deducted trade union dues have now been transferred to the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND) account by the management of the "Moldcarton".

(d) The Committee requests the Government to keep it informed of all measures taken to address the question of access of trade union representatives to the workplaces in order to carry out legitimate trade union activities.

(e) The Committee requests the Government to transmit any judgements handed down by the courts in respect of the AGROINSIND.

(f) The Committee requests the Government to keep it informed of the decision of the Supreme Court concerning the dismissal of Mr Molosag from the post of president of the Federation of Trade Unions of Public Service Employees (SINDASP).

(g) The Committee requests the Government and the complainants to clarify whether the SINDASP, which had previously been affiliated to the CSRM, has since changed its affiliation.

(h) The Committee once again requests the Government, as a matter of urgency, to conduct independent inquiries into all alleged instances of pressure exercised upon the trade unions affiliated to the Union of Education and Science, the AGROINSIND, the Federation of Unions of Chemical Industry and Energy Workers, the "Moldsindcoopcomet" Federation, the "Raut" Trade Union, the Trade Union of Workers of Cadastre, Geodesy and Geology "SindGeoCad" and the Trade Union of Culture Workers. It expects that the inquiries will be truly independent and will be composed of persons having the confidence of all of the parties involved. The Committee requests the Government to keep it informed in this respect.

(i) The Committee requests the Government to provide its observations on the remaining allegations submitted by the ICFTU and, more specifically, on the alleged support by the Government, including the President of the Republic of Moldova, of the "Solidaritate" and trade union monopoly and the pressure exercised on the AGROINSIND members by the employers of the "Moldcarton" enterprise.

B. The complainants' new allegations

998. In its communication dated 27 July 2006, the CSRM alleges new attempts to interfere in the internal matters of its affiliate, the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND). During the meeting of the trade union at the National Institute of Vineyard and Wine, an attempt was made to persuade the members of the union to join the Confederation "Solidaritate" by the consultant of the Agroindustrial Agency "Moldova-Vin".

999. By its communication dated 9 October 2006, the CSRM forwards a copy of an appeal addressed by the President of the confederation "Solidaritate" to the leaders of trade unions affiliated to the AGROINDSIND proposing to start a dialogue on reunification of trade unions in the agriculture and food industry under the leadership of the "Solidaritate".

1000. In their communications dated respectively 29 January and 6 March 2007, the IUF and the CSRM allege that the public authorities and employers interfere in the internal matters of the Commerce, Catering, Consumer Co-Operatives, Restaurant and Hotel Workers' Union of Moldova (SindLucas), their affiliate, and pressure its members to change their affiliation and become members of the Moldsindcoopcomert Union affiliated to the confederation "Solidaritate". In particular, they allege that, in May 2006, the Head of the Directorate of Commercial, Catering and Servicing Enterprises held several meetings in the City Administration where he gave instructions to the managers of enterprises as well as to the staff of the Directorate to compel trade unions to change their affiliation and join the Moldsindcoopcomert Union. The pressure resulted in a 15 per cent membership decrease between 2006 and the beginning of 2007 (622 persons joined the Moldsindcoopcomert Union, 478 de-unionized). Nine trade union organizations were forced to withdraw from the SindLucas. The complainants allege that the tax inspectorate continues to refuse to allow the SindLucas to benefit from a tax exemption, as a non-commercial organization, despite the decision by the Court of Appeal of Chisinau declaring the action of the tax inspectorate illegal. They further allege that, in several school catering centres ("Liceist" in the Buyukan district, "Bucuria El" in the Botanica district and "Riscani"), minutes of trade union meetings attesting that the union has decided to disaffiliate from the SindLucas were fabricated by forging signatures of trade union members. As a result, check-off facilities for the SindLucas were withdrawn. At the "Adolescenta" school catering centre in the Chocana district, trade union members were pressured into voting to change their trade union affiliation.

C. The Government's reply

1001. In its communication dated 13 September 2006, the Government states that the allegations of interference by the Agroindustrial Agency "Moldova-Vin" in the AGROINDSIND's internal affairs submitted by the CSRM were not confirmed. The Government further states that it makes constant efforts to guarantee equal treatment for both trade union confederations and that trade union rights are protected by the national legislation and ensured by the judicial bodies.

1002. In its communication dated 29 December 2006, the Government indicates that the proposal for the unification of the agricultural and food sector trade union federations into a national branch trade union centre within the confederation "Solidaritate" submitted to the AGROINDSIND was an initiative of the confederation "Solidaritate", without any interference or influence from the Government. The Government considers however that such a proposal does not contravene either the provisions of the Law on Trade Unions or ILO Conventions.

1003. By its communication dated 13 March 2007, the Government forwards its observations with regard to the Committee's recommendations (c), (f) and (g). In particular, it indicates that the "Moldcarton" has transferred all deducted trade union dues to the account of the AGROINDSIND. The Government further indicates that the AGROINDSIND, the federation "Sind-PARC", the Trade Union "Labour Federation" and the federation "Sindsilva" (affiliated to the confederation "Solidaritate") agreed to join a single trade union national-branch centre, affiliated to the confederation "Solidaritate". An agreement to this effect was approved by the extraordinary Congress of 25 January 2007, which also elected a new leadership. The AGROINDSIND kept its status as a legal entity, absorbing the federation "Sind-PARC", the trade union "Labour Federation" and the federation "Sindsilva".

1004. With regard to the Federation of Trade Unions of Public Service Employees (SINDASP), the Government confirms that, since March 2004, this trade union is affiliated to the confederation "Solidaritate". With regard to the dismissal of Mr Molosag from the post of President of the SINDASP, the Government indicates that, by its decision of 20 December 2006, the Supreme Court cancelled the decision of the Court of Appeal and maintained the decision of the Buinicani District Court of 16 August 2005 rejecting Mr Molosag's request for reinstatement in his functions as President. On 23 March 2005, the third congress of the SINDASP elected a new President.

1005. By its communication dated 19 March 2007, the Government forwards the agreement of a merger signed between the CSRM and the confederation "Solidaritate" signed on 31 January 2007 (see annex).

1006. In its communication dated 22 May 2007, the Government states that it has no information or documented evidence with regard to the allegations of interference by the Chisinau authorities in the activities of the "SindLucas" trade union. The Government once again reiterates that it treats both confederations (CSRM and "Solidaritate") equally and refers to the adoption on 21 July 2006 of the Act on the Organization and Functioning of the National Commission for Consultation and Collective Bargaining, Commissions for Consultations and Collective Bargaining at the Branch and Territorial Levels. According to the Act, both confederations are equally represented within the National Commission.

1007. In its communication dated 24 September 2007, the Government indicates that following an agreement of 31 January 2007, on 7 June 2007, the CSRM and the confederation "Solidaritate" signed a contract of merging by which the National confederation of Trade Unions of Moldova was established, its statutes adopted and its administration formed.

Once the new confederation is registered, it will become the only national intersectoral union centre representing the interests of workers at the national level.

D. The Committee's conclusions

1008. *The Committee recalls that this case concerns allegations of insufficient protection of trade union rights in law and in practice, as well as of interference by the public authorities and employers in the internal matters of trade union organizations and pressure exercised upon trade union members of the complainant organizations and their affiliates to change their affiliation and become members of the confederation "Solidaritate", allegedly supported by the Government.*

1009. *The Committee takes note of the merger agreement signed between the confederation "Solidaritate" and the complainant organization, the CSRM on 31 January 2007 as well as of the establishment, on 7 June 2007, of the National Confederation of Trade Unions of Moldova, which will become, after its registration, the only national intersectoral union centre. The Committee must express its concern that this recent merger has taken place within the framework of persistent allegations of interference and pressure on trade unions submitted by the CSRM and its affiliates (including the AGROINDSIND and the SindLucas) to change their affiliation to become members of the confederation "Solidaritate" without any information on any meaningful investigation by the Government into these serious allegations and in the absence of any measures to protect these unions from such acts of interference. The Committee notes in addition that, in their communications dated respectively 29 January and 6 March 2007, neither the CSRM nor the IUF mention the above agreement, but rather further submit allegations of interference. The Committee therefore requests the Government to conduct a full, thorough and independent investigation without delay into the alleged acts of interference in the internal affairs of the CSRM and its affiliate organizations and to provide it with a detailed report on the outcome of the investigation. The Committee further requests the complainant organizations to provide information on the merger agreement and its consequences on the confederation and its affiliates.*

1010. *The Committee further notes that, according to the complainants, the tax inspectorate continues to deny the SindLucas the right to benefit from a tax exemption, despite the decision by the Court of Appeal of Chisinau declaring the action of the tax inspectorate illegal. The Committee recalls Case No. 2350 concerning the Republic of Moldova in which the complainant organization, the National Confederation of Employers of the Republic of Moldova (CNPM), alleged that, by not allowing membership contributions to employers' organizations to be considered as fiscally deductible costs, the Government limited employers' organizations' activities and development. On that occasion, the Committee considered that, particularly in countries with a transition economy, special measures, including tax deductions, should be considered in order to ease the development of employers' and workers' organizations [see 338th Report, para. 1084]. The Committee therefore requests the Government to take the necessary measures so as to ensure that the SindLucas is granted the same tax exemption benefits as other non-commercial organizations, as decided by the court, and to keep it informed in this regard.*

1011. *The Committee notes the information provided by the Government in respect of recommendations (c), (f) and (g). It further requests the Government to transmit all court judgements relating to Mr Molosag, former President of the SINDASP.*

1012. *The Committee regrets that no information was provided with regard to the measures taken to implement its recommendations (a), (b) and (d). Given the circumstances of this case and the repeated and diverse allegations of interference in internal trade union affairs, the Committee once again requests the Government to actively consider, in full and*

frank consultations with social partners, legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions against acts of interference in trade union internal affairs. The Committee expects that the measures taken by the Government in this regard will not only address violations of the Labour Code, but also other laws concerning freedom of association and collective bargaining rights, such as the Law on Trade Unions. It requests the Government to keep it informed of all steps taken to this end and recalls that the Government may avail itself of the technical assistance of the Office in this regard.

1013. *As regards its previous recommendation (b), the Committee recalls the CSRM's allegation that employers often oppose the establishment of trade union organizations at their enterprises, as was the case at the Ecological College and the Lyceum "Mircea Eliade". The Committee regrets that, since the first examination of this case in 2004, no information has been provided by the Government in this respect. Recalling that Article 2 of Convention No. 98 prohibits employers from interfering in the establishment of trade unions, the Committee once again requests the Government to conduct an independent inquiry immediately into this allegation and keep it informed in this respect.*

1014. *As concerns the Committee's previous request to take the necessary measures so as to ensure that access to enterprise premises during trade union meetings is allowed to trade union leaders and representatives, with due respect for the rights of property and management, the Committee recalls that the Government had previously expressed its intention to make a proposal to the social partners at the national level to conclude an agreement to establish a mechanism allowing trade union representatives to exercise their trade union duties at the enterprises in order to prevent problems related to workplace access from reoccurring in the future. As no further information has been provided by the Government in this regard, the Committee once again urges the Government to keep it informed of all measures taken to address the question of access of trade union representatives to workplaces in order to carry out legitimate trade union activities, with due respect for the rights of property and management.*

The Committee's recommendations

1015. ***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 conduct a full, thorough and independent investigation without delay into the alleged acts of interference in the internal affairs of the CSRM and its affiliate organizations and to provide it with a detailed report on the outcome of the investigation. The Committee further requests the complainant organizations to provide information on the merger agreement between the CSRM and the confederation "Solidaritate" dated 31 January 2007 and the merger contract dated 7 June 2007 and their consequences on the CSRM and its affiliates.

(b) The Committee requests the Government to take the necessary measures so as to ensure that the SindLucas is granted the same tax exemption benefits as other non-commercial organizations, as decided by the court, and to keep it informed in this regard.

(c) The Committee requests the Government to transmit all court judgements relating to Mr Molosag, former President of the SINDASP.

(d) The Committee once again requests the Government to actively consider, in full and frank consultations with social partners, legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions against acts of interference in trade union internal affairs. The Committee expects that the measures taken by the Government in this regard will not only address violations of the Labour Code, but also other laws concerning freedom of association and collective bargaining rights, such as the Law on Trade Unions. It requests the Government to keep it informed of all steps taken to this end and recalls that the Government may avail itself of the technical assistance of the Office in this regard.

(e) The Committee once again requests the Government to conduct immediately an independent inquiry into the allegation of the employers' refusal to accept the establishment of trade unions at the Ecological College and the Lyceum "Mircea Eliade" and to keep it informed in this respect.

(f) The Committee urges the Government to keep it informed of all measures taken to address the question of access of trade union representatives to workplaces in order to carry out legitimate trade union activities, with due respect for the rights of property and management.

Annex

AGREEMENT

between the Confederation of Trade Unions from the Republic of Moldova and the Confederation of Free Trade Unions from the Republic of Moldova "SOLIDARITATE"

The Confederation of Trade Unions from the Republic of Moldova and the Confederation of Free Trade Unions from the Republic of Moldova "SOLIDARITATE" (hereafter Parties),

FOLLOWING their statutory principles and aims,

BASED on the decision of their executive bodies regarding the reorganization and amalgamation by fusion of trade unions' inter-branch national centers,

INTERESTED in strengthening the unity of trade unions' actions at all levels with the view of unifying the trade unions' movement in the Republic of Moldova,

AIMING to comply with the international standards of trade unions' solidarity, convened over the following:

ARTICLE 1

The Parties shall encourage the collaboration between the member organizations with a view of synchronizing the activities deriving from the process of Confederation amalgamation.

ARTICLE 2

Each party shall ensure the notification of trade unions of all levels on the importance and stage of the amalgamation process.

ARTICLE 3

The Parties shall not encourage the creation of new national branch trade unions and shall safeguard the non-engagement of trade unions of any level in actions that might affect the interests of any participant to the amalgamation process.

ARTICLE 4

The Parties declare that as of 1 February 2007, the executive bodies of trade union inter-branch national centers cease to examine affiliation applications of any trade unions, other than the ones that can be reorganized (organized) within the territory of the existing structures.

ARTICLE 5

The Parties commit themselves to provide all necessary support to the joint working group for the elaboration of draft documents on the amalgamation of the trade unions' inter-branch national centers.

ARTICLE 6

The Parties call on the public authorities, parties, social-political movements and non-government organizations to abstain from any type of interference that might prejudice the process unification of trade unions' movement in the Republic of Moldova.

Leonid MANEA,
President of the Confederation of Free Trade Unions,
from the Republic of Moldova "Solidaritate".

Petru CHIRIAC,
President of the Confederation of Trade Unions,
from the Republic of Moldova.

31 January 2007,
Chisinau.

CASE NO. 2520

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

Complaint against the Government of Pakistan presented by the National Trade Union Federation Pakistan (NTUF)

Allegations: The complainant alleges unfair and discriminatory practices against the Karachi Shipyard Labour Union, one of its affiliates. In particular, the complainant alleges that the management of Karachi Shipyard and Engg Works Ltd has refused to recognize the union and ignored its concerns, and that the latter's registration has been unlawfully cancelled

1016. The complaint is set out in a communication of 23 September 2006.

1017. As a consequence of the lack of a reply on the part of the Government, at its June 2007 meeting [see 346th Report, para. 10], the Committee launched an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case even if the observations or information from the Government have not been received in due time.

1018. 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. The complainant's allegations

1019. In its communication of 23 September 2006, the complainant states that its affiliate the Karachi Shipyard Labour Union (KSLU), which represents employees of the Karachi Shipyard and Engg Works Ltd (hereafter the employer) was registered by the Registrar of Trade Unions of Sindh Province and declared as the collective bargaining agent on 8 January 2003. The employer is a large commercial and industrial establishment, operating both a foundry and laboratory. Its major customers are the sugar mills, foundries, rolling mills and shipping companies belonging to the private sector.

1020. Upon certification as the collective bargaining agent, the KSLU presented a charter of demands for collective bargaining to the employer; the charter of demands, however, was kept pending for the next four years.

1021. The complainant alleges that several "conciliation meetings" were held between the KSLU and the employer from March to August 2006. The meetings were presided over by a conciliator and aimed at resolving the dispute concerning the settlement of the charter of demands.

1022. According to the complainant, on 1 August 2006 a joint meeting of all three of the establishment's registered trade unions was called by the Registrar of Trade Unions to determine the collective bargaining agent for the three-year period to follow. The said meeting continued until the third week of August 2006. On 24 August 2006 the Registrar requested the KSLU to indicate their affiliation with a national trade union federation; two days later it issued an order for cancellation of the KSLU's registration, on grounds that the union "ceased to exist".

1023. The complainant states that no written notice or opportunity to respond was given prior to the issuance of the order. Additionally, the cancellation of the KSLU's registration contravenes section 12(3) of the Industrial Relations Ordinance (IRO), 2002, which provides that the registration of a trade union shall be cancelled by the Registrar only after holding an inquiry. The cancellation of the KSLU's registration, the complainant contends, violates freedom of association principles and is intended to curb trade union activities at the employer's premises.

1024. The complainant attaches a 5 August 2006 notification from the Ministry of Defence Production. The document indicates that the employer had been placed under the administrative control of the Ministry of Defence Production, pursuant to Cabinet Division Order No. 4-15/2006-Min-I of 2 August 2006, and would carry out defence and strategic tasks assigned to it by the Ministry.

1025. Finally, the complainant also attaches a copy of a 26 August 2006 order issued by the Sindh Registrar. The order cancels the registration of the KSLU and two other trade unions, in view of the fact that the employer had been placed under the administrative

control of the Ministry of Defence Production and was therefore no longer subject to the provisions of the IRO. The order further indicates that the cancellation had been executed pursuant to section 12(3)(i) of the IRO.

1026. Section 12(3) of the IRO, 2002, provides that the registration of a trade union shall be cancelled by the Registrar, by giving reasons for such cancellation in writing, if, after holding an inquiry, he finds that any trade union:

(i) has dissolved itself or has ceased to exist; or

(ii) has not been a contestant in a referendum for the determination of a collective bargaining agent; or

(iii) has not applied for determination of collective bargaining agent under section 20(2) within two months of its registration as another union or promulgation of this Ordinance, whichever is earlier, provided there does not already exist a collective bargaining agent determined under section 20(11) in an establishment, or group of establishments or industry; or

(iv) has secured less than 15 per cent of polled votes per final list of voters, during a referendum for the determination of collective bargaining agent.

B. The Committee's conclusions

1027. *The Committee deplores that, despite the time that has elapsed since the submission of this complaint, it has not received the Government's observations, although the Government has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee strongly urges the Government to be more cooperative in the future.*

1028. *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.*

1029. *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them.*

1030. *The Committee recalls that the present case involves allegations concerning the cancellation of a trade union's registration. The Committee observes, from the information before it, that the employer concerned – the Karachi Shipyard and Engg Works Ltd – had been placed under the administrative control of the Ministry of Defence Production, following which the registration of the KSLU was cancelled by an Order of the Sindh Registrar of Trade Unions, pursuant to section 12(3) of the IRO.*

1031. *With respect to the Cancellation Order, the Committee recalls that it has always emphasized that the cancellation of registration of an organization by the registrar of trade unions, or their removal from the register, is tantamount to the dissolution of that organization by administrative authority [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 685]. The Committee*

considers moreover that the dissolution of trade union organizations is a measure which should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defence are fully guaranteed [see ***Digest****, op. cit., para. 699].*

1032. *The Committee notes, from the order of the Sindh Registrar, that the cancellation of the union's registration appears to be due to the fact that the employer had been placed under the administrative control of the Ministry of Defence Production. While the complainant contends that the majority of the work of the enterprise is in the private sector, the Committee wishes to emphasize in any event that civilian workers in the manufacturing establishments of the armed forces should have the right to establish organizations of their own choosing without previous authorization, in conformity with Convention No. 87 [see* ***Digest****, op. cit., para. 227]. In these circumstances, the Committee can only conclude that the cancellation of the KSLU's registration runs contrary to the freedom of association principles mentioned above. It therefore requests the Government to take the necessary measures to revoke the Registrar's order, so as to reinstate the registration of the KSLU and of any other unions that may have been dissolved due to the administrative control of the enterprise concerned by the Ministry of Defence Production. The Committee requests the Government to keep it informed of the steps taken in this regard.*

1033. *The Committee notes that section 12(3) of the IRO provides for the cancellation of a trade union's registration where: the union has dissolved itself or ceased to exist; or not been a contestant in a referendum for the determination of a collective bargaining agent; or has not applied for determination of collective bargaining agent under section 20(2) of the IRO; or has secured less than 15 per cent of polled votes in a referendum for the determination of collective bargaining agent. Although the voluntary dissolution of a trade union by the workers concerned does not, generally speaking, infringe upon trade union rights, in view of the serious consequences that cancellation of a trade union's registration entails for the representation of workers, the Committee considers that the remaining grounds for cancellation provided for in section 12(3) of the IRO – all of which concern the failure to obtain or seek collective bargaining agent status under the relevant procedures – should not result in the cancellation of a trade union's registration. It requests the Government to review and amend section 12(3) of the IRO accordingly.*

1034. *The Committee notes that the KSLU, in spite of having been certified as the collective bargaining agent in 2003, had unsuccessfully pursued negotiations with the employer on several occasions, including by means of conciliation meetings held from March to August 2006 that were aimed at settling the dispute over its charter of demands. In this respect, the Committee requests the Government to initiate an investigation into the obstacles to collective bargaining encountered by the union during this period, and to promote future collective bargaining with the KSLU, if it is still found to be representative of the workers at the Karachi Shipyard and Engg Works Ltd.*

1035. *The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*

The Committee's recommendations

1036. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) Deploring that it has not received the Government's observations, despite the time that has elapsed since the submission of the complaint, the Committee strongly urges the Government to be more cooperative in the future.

(b) The Committee requests the Government to take the necessary measures to revoke the Sindh Registrar's Cancellation Order so as to reinstate the registration of the KSLU and of any other unions that may have been dissolved due to the administrative control of the employer concerned by the Ministry of Defence Production. The Committee requests the Government to keep it informed of the steps taken in this regard.

(c) The Committee requests the Government to review and amend section 12(3) of the IRO, 2002, so that the failure to seek or obtain collective bargaining agent status does not constitute grounds for the cancellation of a trade union's registration.

(d) The Committee requests the Government to initiate an investigation into the obstacles to collective bargaining encountered by the KSLU during the period 2003–06 and to promote future collective bargaining with the union, if it still found to be representative of the workers at the Karachi Shipyard and Engg Works Ltd.

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

CASE NO. 2526

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

Complaint against the Government of Paraguay presented by the International Confederation of Free Trade Unions (ICFTU)

Allegations: The complainant alleges the anti-union dismissal of an official from the banking sector

1037. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 26 October 2006. The ICFTU sent additional information in a communication dated 31 October 2006. The Government sent its observations in a communication dated 8 June 2007.

1038. Paraguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

1039. In its communications of 26 and 31 October 2006, the ICFTU criticizes the arbitrary and anti-union dismissal of Ms Shirley Marisol Rojas, an official of the INTERBANCO SA Workers' Union, on 25 August 2006. The ICFTU indicates that Ms Rojas had been working at INTERBANCO SA for nine years and five months and was therefore very close to obtaining stability of employment, since Paraguayan labour law stipulates that:

"Any worker who obtains stability of employment after ten years of service shall not be liable to dismissal, unless there is a valid reason." According to the ICFTU, the bank has acknowledged that she has been given an "A" performance appraisal for the impeccable way in which she performs her duties; that category is reserved for exemplary employees and entitles them to an end-of-year bonus. Furthermore, her trade union activities during this entire period were very intense, and for three consecutive terms she was a member of the union's executive committee. Her dismissal was therefore presumed to be simply a means of putting a stop to her trade union activities, given that the bank does not recognize her trade union immunity and refuses to acknowledge her membership of the union's executive committee.

1040. The ICFTU states that, as a result of the intense pressure maintained by the Federation of Bank Employees (FETRABAN) and other Paraguayan trade union organizations in protest at such an unfair dismissal, as acknowledged by lawyers from the Ministry of Labour, Ms Rojas was allowed to return to work but was not paid any wages for the month of September, was not reinstated in her former post, and not assigned any duties.

B. The Government's reply

1041. In its communication of 8 June 2007, the Government states that, with regard to this case, the Office of the Deputy Minister of Labour and Social Security sent letters to the Federation of Production, Industry and Commerce (FEPRINCO) and INTERBANCO requesting them to state their position on the matter. INTERBANCO SA indicated the following: (1) Ms Shirley Marisol Rojas was dismissed from INTERBANCO SA on 25 August 2006 in accordance with the administrative powers granted to enterprises under labour law, and received full compensation and social benefits. She refused to accept this situation and on 31 August 2006 filed a complaint which is currently under examination by the courts; the bank has agreed to be bound by the outcome of this examination. At present, Ms Shirley Marisol Rojas is not a staff member, in accordance with a judicial decision; (2) at the time of her dismissal, Ms Shirley Marisol Rojas did not have the employment stability afforded to union officials owing to the fact that she was serving on the executive committee of the INTERBANCO SA Workers' Union for a third consecutive term of office. In this respect, section 323 of the Labour Code clearly states that the employment stability enjoyed by union officials cannot be extended to cover the same person for more than two consecutive or alternate terms within a period of ten years. The INTERBANCO SA Workers' Union and the Labour Directorate were informed of this situation in writing in May 2006; (3) on 8 October 2006, following her dismissal and after she had filed a judicial complaint against INTERBANCO, Ms Shirley Marisol Rojas sent a certified telegram to inform the bank that she was pregnant; (4) the actions of union representatives and their aggressive behaviour during a campaign to discredit INTERBANCO, its management and its authorized representative, and the related demands, claims and absurd complaints, all of which were clearly intended to extort concessions, are not helping to resolve the dispute, given that the bank is simply awaiting a ruling; and (5) INTERBANCO SA respects the independence of the judiciary and fully complies with the constitutional and legal requirements that protect employees' freedom of association for trade union purposes.

1042. The Government adds that the Office of the Deputy Minister of Labour and Social Security has applied the following procedures in relation to this case: (1) the INTERBANCO SA union filed a complaint with the Deputy Minister of Labour and Social Security alleging irregular practices at INTERBANCO SA and referred, among other things, to the illegal dismissal of Ms Shirley Marisol Rojas, who was a member of the union's executive committee and protected by the employment stability afforded to union officials; this was a violation of the Labour Code (document No. 21187/96 and 21188/06); (2) the Office of the Deputy Minister of Labour and Social Security, through inspection Order No. 0393/06 and

in response to the complaint filed, ordered a labour inspection for the purpose of assessing the situation of workers and compliance with existing labour standards; (3) the officers appointed to assess the enterprise's compliance with labour standards visited the workplace and wrote up their findings, which were submitted to the Labour Administration Authority and referred to the Labour Directorate (inspection and monitoring department); (4) the legal office, in accordance with Order No. 2564/06, recommended that administrative proceedings should be instituted concerning the alleged infringements of existing labour laws at INTERBANCO SA, in accordance with section 398 of the Labour Code; and (5) the file is pending and has been assigned to a judge, and, if it is established that labour laws have been infringed, as alleged by the workers, the sanctions set out in the Labour Code will be imposed, in accordance with the provisions of the Labour Code, Book V, Title I, section 384 ff.

C. The Committee's conclusions

1043. *The Committee observes that, in the present case, the complainant alleges that Ms Shirley Marisol Rojas, an official of the INTERBANCO SA Workers' Union, was dismissed on 25 August 2006 (after working at the enterprise for over nine years with an impeccable work record) and that, although she subsequently returned to work, she received no wages for the month of September 2006, was not reinstated in her former post and not assigned any duties.*

1044. *The Committee notes that according to the Government, INTERBANCO SA stated that: (1) Ms Shirley Marisol Rojas was dismissed from INTERBANCO SA on 25 August 2006 in accordance with the administrative powers granted to enterprises under labour law and received full compensation and social benefits. Ms Shirley Marisol Rojas refused to accept the situation and on 31 August 2006 filed a complaint, which is currently before the courts; the bank has agreed to be bound by the outcome of that examination. At present, Ms Shirley Marisol Rojas is not a staff member, under the terms of a judicial decision; (2) at the time of her dismissal, Ms Shirley Marisol Rojas did not enjoy the employment stability afforded to union officials owing to the fact that she was serving on the executive committee of the INTERBANCO SA Workers' Union for a third consecutive term. In this respect, section 323 of the Labour Code clearly states that the employment stability afforded to union officials cannot be extended to cover the same individual for more than two consecutive or alternate terms within a period of ten years. The INTERBANCO SA Workers' Union and the Labour Directorate were informed of this situation in writing in May 2006; (3) the actions of union representatives and their aggressive behaviour during a campaign to discredit INTERBANCO, its management and its authorized representative, are in no way helping to resolve the dispute, given that the bank is simply awaiting a ruling; and (4) INTERBANCO SA respects the independence of the judiciary and fully complies with the constitutional and legal requirements that protect employees' freedom of association for trade union purposes.*

1045. *Furthermore, the Committee notes the Government's statements to the effect that: (1) the INTERBANCO SA union filed a complaint with the Deputy Minister of Labour and Social Security concerning irregular practices at INTERBANCO SA and referred, among other things, to the illegal dismissal, in violation of the Labour Code, of the employee in question, who was a member of the union's executive committee and protected by the employment stability afforded to union officials; (2) the Office of the Deputy Minister of Labour and Social Security, through inspection Order No. 0393/06 and in response to the complaint filed, ordered that a labour inspection be conducted to assess the situation of workers and compliance with existing labour standards; (3) the officers appointed to assess the enterprise's compliance with labour standards visited the workplace and wrote up their findings, which were submitted to the Labour Administration Authority and referred to the Labour Directorate (inspection and monitoring department); (4) the legal*

office, in accordance with Order No. 2564/06, recommended that administrative proceedings should be instituted into the alleged infringements of existing labour laws at INTERBANCO SA, in accordance with the provisions of section 398 of the Labour Code; and (5) the file is pending and has been assigned to a judge, and, if it is established that labour laws have been infringed, as alleged by the workers, the sanctions set out in the Labour Code will be applied, in accordance with the provisions of Book V, Title I, section 384 ff., of the Labour Code.

1046. *In this regard, the Committee observes that, while the complainant indicates that union official Ms Shirley Marisol Rojas has been allowed to return to work, INTERBANCO SA states that she has been dismissed from the enterprise. The Committee also notes that according to INTERBANCO SA, she filed a judicial complaint following her dismissal, while according to the Government, the administrative authority conducted an investigation into the case, which is still pending and under examination by the legal authority. The Committee recalls that: "No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment"; and that "One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 771 and 799]. Under these circumstances, and in view of the fact that union officials are not protected by law after two consecutive or alternate terms in union office during a period of ten years (section 323 of the Labour Code), the Committee trusts that: (1) there are other legal provisions which provide for sanctions and compensatory measures for acts of anti-union discrimination after the period set out in section 323 of the Labour Code; and (2) if the legal authority confirms that union official Ms Shirley Marisol Rojas was dismissed for anti-union reasons, the Government will take the necessary measures to ensure that she is reinstated in her post, or a similar post corresponding to her abilities, and paid any arrears of wages owed to her. If the judicial authority considers that reinstatement is not possible, the Committee expects that she will receive adequate compensation. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendation

1047. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

> ***The Committee requests the Government, if the judicial authority confirms that union official Ms Shirley Marisol Rojas was dismissed from INTERBANCO SA for anti-union reasons, to take the necessary measures to ensure that she is reinstated in her post, or a similar post corresponding to her abilities, and paid any arrears of wages owed to her. If the judicial authority considers that reinstatement is not possible, the Committee expects that she will receive adequate compensation. The Committee requests the Government to keep it informed in this respect.***

CASE NO. 2248

DEFINITIVE REPORT

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: Anti-trade union dismissals, criminal charges against trade unionists and other anti-trade union acts

1048. The Committee examined this case at its November 2006 meeting and presented an interim report to the Governing Body [see 343rd Report, paras 1030–1048, approved by the Governing Body at its 297th Session (November 2006)].

1049. The Government sent new observations in a communications dated 12 March and 26 October 2007.

1050. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

1051. At its November 2006 meeting, the Committee made the following recommendations concerning the questions that remained pending [see 343rd Report, para. 1048]:

(a) The Committee requests the Government to indicate whether the trade union official, Mr. Julio Purizaca Cornejo (Petrotech Peruana SA) has applied to the courts for a reinstatement order and, if he has done so, to communicate the outcome.

(b) Noting the allegations concerning the criminal proceedings initiated against the trade union official, Mr. Ricardo José Quispe Caso, by the Southern Peru Copper Corporation for disrupting public order ("disorderly meeting"), in the absence (according to the complainant organization) of any credible evidence and for anti-union motives, the Committee requests the Government to send a copy of any ruling handed down.

(c) As regards the alleged dismissal of more than 300 workers of the permanent workforce at the Corporación Aceros Arequipa SA and their replacement with workers hired on less favourable terms with a view to undermining the trade union, the Committee once again urges the Government to communicate the outcome of the inspection visit carried out by the authorities to the enterprise and to send its observations on the dismissal of more that 300 workers.

(d) The Committee once again urges the Government without delay to send its observations on the allegations concerning harassment of Mr. Victor Alejando Valdivia Castilla, the press and propaganda secretary of the Trade Union of Ancash Regional Government Workers, by the President of the Ancash region.

B. The Government's reply

1052. In its communications of 12 March and 26 October 2007, in relation to the recommendation of the Committee on Freedom of Association regarding the enterprise Petrotech Peruana SA (dismissal of trade union official Mr Julio Purizaca Cornejo), the Government states that the Ministry of Labour and Employment Promotion sent a letter to

the General Confederation of Workers of Peru (CGTP) requesting information on the matter. No reply was received and the Government accordingly requested the Higher Court of Justice of Lima to inform it whether Mr Julio Purizaca Cornejo had applied to the courts for a reinstatement order against Petrotech Peruana SA. In reply to this last request, the Government was informed that the Centre for the Issuing of Reports of the Higher Court of Justice of Lima had no record in its database of any proceedings brought by Mr Julio Purizaca Cornejo. The Government recalls that, when the case was last examined, it was noted that another trade union official had been reinstated by the enterprise by order of the judicial authority.

1053. As to the criminal proceedings initiated against the trade union official Mr Ricardo José Quispe Caso by the Southern Peru Copper Corporation for disrupting public order, in the absence (according to the complainant organization) of any credible evidence and for anti-union motives, the Government provides information from the Titular Head of the Provincial Prosecutor's Office of Jorge Basadre, Jorge Basadre Province, Tacna Department, according to which, on 20 April 2005, it was ruled that, as it had not been proved that an offence had been committed, there were no grounds for proceeding with the case, for which reason the criminal proceedings were set aside definitively. The claimant lodged an appeal against the decision to set aside the proceedings. That appeal was decided by the Second Higher Combined Prosecutor's Office of Tacna, which upheld the definitive setting aside of the proceedings and dismissed the case.

1054. As to the alleged dismissal of more than 300 workers from the Aceros Arequipa SA de Pisco workforce, the Government states that, at the beginning of the 1990s, the enterprise Corporación Aceros Arequipa SA began to introduce the concept of "total quality" with regard to its staff, as a preliminary step in the process of modernizing the organization of its two plants. In this way, and through the introduction of cutting-edge technology, the enterprise brought its quality system into line with the latest requirements of standard ISO 9001. Thus, in 1990, a contract for the transfer of technology was signed with the metallurgical enterprise Méndez Junior (SMJ) of Brazil. As a part of the agreement, a team of workers from the enterprise Corporación Aceros Arequipa SA ran a 1,480-hour training programme at the Brazilian plant.

1055. As stated by the enterprise Corporación Aceros Arequipa SA, in registration letter No. 2070, of 7 July 2005, the enterprise was forced to change its internal structure as a result of this modernization process. Some workers employed in areas affected by the introduction of new technology, in particular operations and production, were laid off. These dismissals were carried out in accordance with article 38 of the Act on Productivity and Labour Competitiveness and Legislative Decree No. 728 which provides for appropriate compensation for each worker.

1056. It should also be pointed out that, if more than 300 workers had been dismissed from the enterprise Corporación Aceros Arequipa SA, then the enterprise would currently be faced with the same number of judicial proceedings. The report of the Higher Court of Justice of Ica shows that this is not at all the case; only two cases, brought by the Union of Workers of the Corporación Aceros Arequipa SA, are currently before the Labour Court of Pisco (files Nos 2002-241 and 2004-267). These cases concern the restoration of social benefits, food stamps, bonuses by category, five-yearly bonuses, restoration of attendance bonuses and family allowances.

1057. On 17 August 2006, following a complaint made by the trade union, an inspection visit (ordered by the Regional Directorate of Labour and Employment Promotion of Ica, Pisco Labour and Employment Promotion Area) was carried out at plant No. 2 of the enterprise Corporación Aceros Arequipa SA, in the city of Pisco, in order to ascertain whether the workers hired by the enterprise Servicios Globalizados SA (SERGLOSA) to work at the

user enterprise are employed permanently in the user enterprise's production or core activities, and whether the workers hired by the enterprise Corporación Aceros Arequipa SA receive the same benefits as permanent workers, such as production or attendance bonuses. The labour inspector noted that:

– the 31 workers hired by the enterprise, SERGLOSA, are assigned to the enterprise Corporación Aceros Arequipa SA for work in production and related areas under "fixed-term, intermittent employment" contracts;

– neither production bonuses nor attendance bonuses are included in the collective agreement. The enterprise Corporación Aceros Arequipa SA reserves the right as employer to grant workers such bonuses on a fair basis. Some 207 workers do not currently receive either of the bonuses while six contracted workers receive both.

1058. A scheduled inspection visit to the enterprise SERGLOSA was carried out on 24 October 2006, on the orders of the Regional Directorate of Labour and Employment Promotion of Ica, Pisco Labour and Employment Promotion Area. The purpose of the visit was to verify compliance by the enterprise with labour standards (file No. 106-2006-JL-PIS-UPG). During the visit, the following points were noted: the enterprise SERGLOSA produced payrolls showing that the workers had been registered; pay slips for July, August and September 2006, showing payments to the workers; proof of payment of length of service entitlements (CTS) and submission of documents listing payments made to each individual for the periods November 2005–April 2006 and May–October 2006; proof of statutory payments to workers for December 2005 and July 2006; proof of holiday payments and holiday entitlements for the period in question; proof of distribution among the workers of a share of the profits for the 2005 tax year, as well as the corresponding documents listing payments made; proof that a summary of payrolls for June 2006 was presented to the Ministry of Labour and Employment Promotion; proof of use of an industrial relations service and of notification of this fact to the Administrative Labour Authority; submission of the internal labour regulations approved by the Administrative Labour Authority; proof of availability of a recognized social assistance service; submission of an attendance sheet and a complementary insurance policy for hazardous work.

1059. As to the complaint regarding the Regional Government of Ancash, the Government recalls that, in the complaint, it is alleged that the President of the Ancash region lodged a complaint alleging aggravated defamation against Mr Víctor Alejando Valdivia Castilla (Press and Propaganda Secretary of the Trade Union of Ancash Regional Government Workers) following statements he made to the media (previously the Trade Union of Ancash Regional Government Workers reported the President of the Ancash region to the Provincial Prosecutor's Office of Huaraz for "embezzlement and misappropriation of funds"). The Committee on Freedom of Association urged the Government without delay to send its observations on the allegations concerning harassment of Mr Víctor Alejando Valdivia Castilla, the Press and Propaganda Secretary of the Trade Union of Ancash Regional Government Workers, by the President of the Ancash region. In this regard, the Government states that it has received no verbal or written notice of this complaint concerning harassment of the trade union official.

C. The Committee's conclusions

1060. *As to the request for information contained in recommendation (a), made during the last examination of this case, the Committee notes the Government's statement that the Centre for the Issuing of Reports of the Supreme Court of Justice has no record in its database of any proceedings initiated by Mr Julio Purizaca Cornejo, and that the complainant organization failed to respond to the Ministry of Labour's request to be informed as to whether the trade union official had applied to the courts for a reinstatement order against*

Petrotech Peruana SA. The Government recalls that, when the case was last examined, it was noted that another trade union official had been reinstated by the enterprise under an order issued by the judicial authority. The Committee therefore invites the complainant organization, should it so desire, to initiate judicial proceedings in connection with the dismissal of the official in question following the establishment of a trade union.

1061. *As to recommendation (b), the Committee notes that the Public Prosecutor's Office set aside definitively the criminal proceedings initiated against the trade union official, Mr Ricardo José Quispe Caso, by the Southern Peru Copper Corporation for disrupting public order ("disorderly meeting").*

1062. *As to the alleged dismissal of more than 300 workers since 1990 from the permanent workforce at the Corporación Aceros Arequipa SA with the aim of undermining the trade union (recommendation (c)), the Committee notes the outcome of the inspection visits carried out by the labour inspectorate which are described in detail in the Government's reply. According to the Government, the enterprise had been carrying out restructuring since July 2005 for technological reasons and that process had led to dismissals and the payment of statutory compensation. The Committee notes the Government's statement to the effect that the trade union of the enterprise has lodged only two complaints concerning social benefits and bonuses. Moreover, during an inspection visit carried out by the labour inspectorate at the enterprise Corporación Aceros Arequipa SA concerning the labour contracting enterprise SERGLOSA, which had assigned 31 workers to the enterprise Corporación Aceros Arequipa SA, it was noted that these workers were employed under fixed-term intermittent contracts, that production and attendance bonuses are not included in the collective agreement and that the company reserves the right to grant such bonuses on a fair basis.*

1063. *The Committee notes that, according to the Government and the results of the last labour inspection visit, the enterprise SERGLOSA appears to be in compliance with labour legislation. However, given the concerns expressed by the complainant organization, the Committee requests the Government to ensure that the production and attendance bonuses are not used by the enterprise Corporación Aceros Arequipa SA in a discriminatory fashion against workers belonging to the trade union and working for the enterprise Corporación Aceros Arequipa SA or the enterprise SERGLOSA. Finally, the Committee notes that no mention is made in the labour inspectorate reports of anti-trade union dismissals or practices and that the dismissals carried out since 1990 and referred to in the allegations are due mainly to the restructuring process carried out from 2005 onwards for technological reasons.*

1064. *Finally, as to recommendation (d), regarding the harassment of trade union official Mr Víctor Alejando Valdivia Castilla by the President of the Ancash region (involving, according to the allegations, a complaint of aggravated defamation [see 338th Report, para. 1190]), the Committee notes that the authorities have not received any verbal or written notice in this regard. The Committee invites the complainant organization to initiate legal proceedings.*

The Committee's recommendations

1065. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee invites the complainant organization to initiate legal proceedings regarding the reinstatement of trade union official Mr Julio Purizaca Cornejo at the enterprise Petrotech Peruana SA and the alleged

harassment of trade union official Mr Víctor Alejando Valdivia Castilla by the President of the Ancash region.

(b) The Committee requests the Government to ensure that the production and perfect attendance bonuses granted by the enterprise Corporación Aceros Arequipa SA are not used in a discriminatory fashion against the workers belonging to the trade union.

CASE NO. 2400

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

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: Dismissal of trade union leaders and members in several enterprises; acts of harassment following the establishment of trade unions; legal challenge to the registration of a trade union and refusal to negotiate a list of demands

1066. The Committee examined this case at its meeting in March 2006 and on that occasion presented an interim report to the Governing Body [see 340th Report, paras 1199–1231, approved by the Governing Body at its 295th Session (March 2006)]. The General Confederation of Workers of Peru (CGTP) sent further information in communications dated 26 April 2006 and 6 February 2007.

1067. The Government sent its observations in communications dated 15 February and 25 October 2006 and 26 October 2007.

1068. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

1069. At its last meeting, the Committee made the following recommendations [see 340th Report, paras 1199–1231]:

(a) Concerning the allegations related to the enterprise Gloria SA, the Committee asks the Government to keep it informed of judicial proceedings as regards Fernando Paholo Trujillo Ramírez, the secretary-general Felipe Fernández Flores, the secretary for organization, Miguel Moreno Avila and the secretary for defence, Gilver Arce Espinoza, and that, if the dismissals of trade union leaders are ascertained to have been of an anti-union nature, the Committee requests the Government to take measures to ensure that they are reinstated in their posts and if that is not legally possible, that they are fully compensated; such compensation should include sufficiently dissuasive sanctions against the employer for such anti-union conduct.

(b) In regard to the alleged anti-union dismissal of Segundo Adán Robles Nunura by the enterprise Petrotech Peruana SA, following his designation as president of the negotiating committee for the 2004-05 list of demands, the Committee expects that the judicial authority will promptly reach a decision regarding the dismissal of the trade union official in question and requests the Government to keep it informed of the judgement.

(c) Regretting that the Government has failed to send its observations concerning allegations regarding dismissals of trade union officials and members of the Unified Trade Union of Workers of the Banco del Trabajo (SUTRABANTRA) in the context of a harassment campaign conducted by the Banco del Trabajo, and allegations that the enterprise in question has challenged the trade union's registration and refused to negotiate the list of demands, the Committee urges the Government promptly to send its observations regarding these allegations.

B. Additional information from the complainant

1070. In its communication of 26 April 2006, the CGTP reports that, with regard to the dismissal from the Gloria SA enterprise of three union leaders who were workers' representatives in collective bargaining, the workers were also accused of the serious offence of reporting the granting of pay rises to "trusted" staff (computer crime of illicit interference in, accessing or copying of information from a database). In that regard the judge of the 39th Criminal Court of Lima in report No. 25-2006 RDT decided not to open an investigation because one of the requirements for criminal proceedings is that the alleged offender must have been identified, which was not the case, and because if a criminal charge is not backed up by minimal evidence in support of the accusation, it is an arbitrary act, that is, even the criminal judge agrees with the illegally dismissed officials that they have not done anything warranting an accusation, let alone dismissal.

1071. In a communication dated 6 February 2007, the CGTP states that, on 1 September 2006, Mr Arnoldo Efraín Calle Flores, General Secretary of the Unified Trade Union of Employees of the Banco del Trabajo (SUTRABANTRA), was reinstated in his post by a judicial order containing a protective order, after a 30-month legal battle with the Banco del Trabajo. The judicial authority had ruled in favour of the official on two occasions, ordering his reinstatement and the payment of accrued earnings, having found that the true motivation for his dismissal had been the establishment of the trade union and his participation in trade union activities. Currently the main proceedings are under way in the Supreme Court of the Republic of Peru, which is set to confirm the previous rulings. Despite this, in order to prevent the union leader Efraín Calle Flores from working, the Banco del Trabajo illegally assigned him to an inland province, in violation of the trade union immunity that protects him from such anti-union measures. He complained to the Banco del Trabajo and to the court, but the enterprise once again obstructed his admission to work, alleging that he had abandoned his post, disregarding the fact that there was a judicial protective order in his favour.

1072. The CGTP adds that the Banco del Trabajo had legally challenged the registration of SUTRABANTRA, but the request had been definitively rejected by the court in a judgement dated 10 January 2007. Nevertheless, the Banco del Trabajo, in contempt of the judicial ruling, continues to deny recognition to SUTRABANTRA as a legitimate workers' representative body. As a result of not recognizing SUTRABANTRA, the Banco del Trabajo has refused to bargain collectively with the trade union, and the lists of demands for the years 2004, 2005 and 2006 are still pending resolution.

C. The Government's reply

1073. In its communications of 15 February and 25 October 2006 and 26 October 2007, the Government reports the following with regard to the allegations still pending.

Gloria SA enterprise

1074. Case brought by Gilver Arce Espinoza. In ruling No. 183403-2005-298-3erJTL-CFL of 14 August 2006, the judge in the Third Labour Court of Lima referred to information on the status of the case brought by Mr Gilver Arce Espinoza against Gloria SA for wrongful dismissal, set out in file No. 183403-2005-00298. In this regard, he noted that the request made by Mr Gilver Arce Espinoza was admitted to the proceedings on 27 July 2005 by resolution No. 1, and the defendant was accordingly notified. Later, on 27 July 2005, Mr Arce presented a written statement requesting the withdrawal of the case because he had received full payment of his social benefits including length of service pay and other entitlements. Taking account of the request to withdraw the case, the Third Labour Court, through resolution No. 3 of 15 September 2005, ordered the case to be filed; it is currently in the General Archive of the Supreme Court of Justice of Lima.

1075. Case brought by Mr Miguel Moreno Avila. The judge in the Twenty-first Labour Court of Lima reported that with regard to the case brought by Mr Miguel Moreno Avila against the Gloria SA enterprise for wrongful dismissal, file No. 183421-2005-00303, notification of the case was sent to the defendant, who duly responded to the claim, and both parties were convened on 18 July 2006 for the single hearing. The proceedings are pending on appeal.

1076. Case brought by Mr Felipe Fernández Flores. The judge in the Twenty-Fourth Labour Court of Lima reported on the status of the case brought by Mr Felipe Fernández Flores against the Gloria SA enterprise (file No. 183424-2005-00301). He indicated that, as the case had been declared procedurally valid and the evidence on disputed points had been heard, resolution No. 13 of 15 June 2006 provided that the documents could be decided and was ready for ruling. It should be noted that Mr Fernández applied to the court to grant the protective order for payment of a provisional allowance, which was declared inadmissible because it had not shown convincingly that the party concerned had been unfairly dismissed. The proceedings are pending on appeal.

Petrotech Peruana SA

1077. With regard to the case of the anti-union dismissal of Mr Segundo Adán Robles Nunura, the Government notes that the Supreme Court of Justice of Lima reported that the Sixth Court ruled on case No. 183406-2004-00093-0 on 11 May 2006 declaring the claim to be "unfounded". An appeal against the ruling was lodged by Mr Segundo Adán Robles Nunura; the appeal was upheld in a resolution dated 12 June 2006 and the case referred to the Labour Tribunal. This case has been before the First Labour Tribunal since 15 August 2006 and assigned case No. 4342. A hearing before the Tribunal has been scheduled for 3 October 2006, and the case is still pending. Once the proceedings are concluded, a report on the result of the proceedings will be issued. The Government adds that in letter No. 6M-179-2006 dated 11 August 2006, the General Manager of the Petrotech Peruana SA enterprise reported on the proceedings brought by Mr Segundo Adán Robles Nunura before the Sixth Labour Court of Lima to annul his dismissal.

Banco del Trabajo

1078. With regard to the allegations of dismissals of union officials and members of the SUTRABANTRA in the context of a harassment campaign by the Banco del Trabajo, and

allegations that the Banco del Trabajo had challenged the registration of the union and refused to negotiate a list of demands, the Government states that the administrative authority requested the General Manager of the Banco del Trabajo to report on the status of the cases brought by SUTRABANTRA. In response, the General Manager of the Banco del Trabajo provided information in letter GL/312-06 of 22 September 2006 that the SUTRABANTRA union had initiated judicial proceedings against their client to cease hostilities, and the case was currently before the Second Labour Court of Piura under file No. 2004-092.

1079. With regard to the two lists of demands that are pending before the Administrative Labour Authority, having been presented by the aforementioned trade union, the Government states that the Banco del Trabajo opposed them because there was another union in the city of Lima called the Single Union of Employees of the Banco del Trabajo (SUDEBANTRA), to which some members of SUTRABANTRA also belonged; signing up to both organizations at the same time was illegal. On this point, it is worth noting that, through official letter No. 643-2006-MTPE/9.1, dated 15 August 2006, the Regional Director for Labour and Employment Promotion of Piura was requested to report on the status of the lists of demands between SUTRABANTRA and the Banco del Trabajo. In that regard, a letter was received on 8 September 2006, No. 454-2006-Gob.Reg.DRTPE-DR, from the Regional Directorate for Labour and Employment Promotion of Piura, stating that the Subdirectorate for Collective Bargaining of the Regional Directorate for Labour and Employment Promotion of Piura was dealing with three cases pertaining to negotiations of lists of demands between SUTRABANTRA and the Banco del Trabajo, corresponding to the years 2004, 2005 and 2006. It mentioned that report No. PR-002-2004-DRTPE-PIURA-SDNCIHSO sets out the written administrative proceedings initiated by the Banco del Trabajo on 16 August 2004, in which they oppose consideration of the 2004 list of demands presented by SUTRABANTRA because they had lodged a request for "cancellation of union registration" with the First Labour Court of Piura, which has been hearing the case since 18 June 2004.

1080. The Government adds that, as official documents confirmed that the Banco del Trabajo's request for "dissolution of the union" was awaiting a ruling from the competent body, and in accordance with the provisions of article 13 of the Organic Law of the Judiciary, the Labour Authority of First Instance in an unnumbered resolution of 17 August 2004 suspended the case until the aforementioned proceedings were resolved. In a document dated 15 September 2004, the trade union made an appeal to challenge the Labour Authority rulings, referring the rulings to the Regional Directorate for Labour and Employment Promotion of Piura for a second instance ruling, which in directorial resolution No. 096-2004-DRTPE-PIURA-DPSC of 29 October 2004 covered the issues raised by the trade union and found in favour of the legal challenge, nullifying the ruling of the Labour Authority of First Instance and enabling the collective bargaining process to continue.

1081. Subsequently, at the request of the trade union, the Labour Authority of the Negotiation Subdirectorate forwarded the relevant file to the Technical Administrative Office of the Regional Directorate so that it could carry out a "financial economic study" of the Banco del Trabajo enterprise. In view of this, the Banco del Trabajo filed an "opposition" motion, again alleging that the parties were in a dispute before the courts. The Labour Authority accepted the opposition motion, because the enterprise guaranteed that it had lodged an appeal to annul the judicial proceedings for the cancellation of union registration; the Technical Administrative Office was accordingly instructed to suspend its "financial economic study" of the enterprise pending the results of the judicial proceedings. The trade union appealed, and in directorial ruling No. 066-2006-DRTPE-PIURA-DPSC of 9 May 2006, the first instance ruling was overturned and the revised resolution declared the Banco del Trabajo's opposition to be unfounded.

1082. The Government adds that in ruling No. 306-2006-DRTPE-PIURA-SDNCIHSO, the Negotiation Subdirectorate sent the Technical Administrative Office the relevant set of instruments so that it could continue with the "financial economic study" of the enterprise. In this context, on 19 July 2006, the First Specialized Tribunal for Civil Matters of Piura handed down resolution No. 16 upholding the appealed ruling and agreeing to the request brought by the Banco del Trabajo against the Directorate for Prevention and Resolution of Labour Disputes of the Regional Directorate for Labour and Employment Promotion, on the contentious administrative proceedings; as a result directorial resolution No. 096-2004-DRTPE-PIURA-DPSC of 29 October 2004 was overturned, and the Regional Directorate was directed to issue a new resolution in accordance with what was laid down in the ruling. In accordance with the judicial mandate, the Regional Directorate recalled the legal norms handed down by the First Court and issued a decision in directorial resolution No. 153-2006-DRTPE-PIURA-DPSC of 29 August 2006, declaring that the appeal made by SUTRABANTRA was unfounded. As a result, it confirmed the decision of the Labour Authority of First Instance in the unnumbered resolution of 17 August 2004, that is, to suspend the proceedings relating to the list of demands for 2005 and the list of demands for 2006 in files Nos 003-2005-DRTPE-PIURA-SDNCIHSO and 002-2006-DRTPE-PIURA-SDNCIHSO. In respect of these rulings, the negotiation of the lists of demands has been suspended until the ongoing legal case is resolved.

1083. Lastly, with regard to the issue of the registration of SUTRABANTRA, the Government reports that the Subdirectorate for General Registrations concurs with the Regional Directorate for Labour and Employment Promotion of Piura that the registration of this trade union remains unchanged.

D. The Committee's conclusions

1084. *The Committee observes that the allegations that had remained pending in the present case concern: (1) judicial proceedings as regards Fernando Paholo Trujillo Ramírez, General Secretary Felipe Fernández Flores, Organization Secretary Miguel Moreno Avila, and Defence Secretary Gilver Arce Espinoza; (2) the alleged anti-union dismissal of Segundo Adán Robles Nunura by the enterprise Petrotech Peruana SA, following his appointment as president of the negotiating committee for the 2004–05 list of demands; and (3) the dismissals of trade union officials and members SUTRABANTRA in the context of a harassment campaign conducted by the Banco del Trabajo, and the allegation that the enterprise in question has challenged the trade union's registration and refused to negotiate the list of demands.*

1085. *With regard to the ongoing judicial proceedings concerning the dismissals in the Gloria SA enterprise, the Committee notes the Government's information that: (1) Mr Gilver Arce Espinoza presented a written statement to the court requesting the withdrawal of the case because he had received payment of his social benefits, including length of service pay and other entitlements. The judicial authority ordered the case to be filed; (2) in the case brought by Mr Felipe Fernández Flores, and by Mr Miguel Moreno Avila, the proceedings are pending on appeal. In these circumstances, the Committee expects that the proceedings will be concluded soon, and requests the Government to keep it informed of the outcome of the proceedings concerning union officials Felipe Fernández Flores and Miguel Moreno Avila. In addition, the Committee urges the Government to keep it informed without delay of the proceedings concerning the dismissal of Mr Fernando Paholo Trujillo Ramírez, about which it has sent no information. The Committee also notes the complainant's information, according to which the three union officials from the Gloria SA enterprise had been accused of committing offences, but the judicial authority decided not to launch criminal proceedings.*

1086. *With regard to the alleged anti-union dismissal of Mr Segundo Adán Robles Nunura by the Petrotech Peruana SA enterprise, following his appointment as president of the negotiating committee for the 2004–05 list of demands, the Committee notes the Government's statements to the effect that: (1) the Sixth Court handed down a ruling on 11 May 2006 declaring the claim to be "unfounded", an appeal was lodged by Mr Segundo Adán Robles Nunura and upheld in a resolution dated 12 June 2006, and the case was referred to the Labour Tribunal; (2) this case has been before the First Labour Tribunal since 15 August 2006 and assigned file No. 4342. The hearing of the case by the Tribunal has been scheduled for 3 October 2006; this case is still ongoing. Once the proceedings are formally concluded, a report will be issued on the outcome; and (3) in letter No. 6M-179-2006 dated 11 August 2006, the General Manager of the Petrotech Peruana SA enterprise reported on the proceedings brought by Mr Segundo Adán Robles Nunura before the Sixth Labour Court of Lima to annul his dismissal. In these circumstances, the Committee expects that the judicial proceedings will be concluded soon and requests the Government to keep it informed of their outcome.*

1087. *With regard to the alleged dismissals of union officials and members of SUTRABANTRA in the context of a campaign of harassment by the Banco del Trabajo, the Committee notes the Government's statements to the effect that according to the report of the General Manager of the Banco del Trabajo, the SUTRABANTRA union had initiated judicial proceedings against the Banco del Trabajo to cease hostilities, and the proceedings are currently under way before the Second Labour Court of Piura. The Committee also notes the complainant's statement that: (1) on 1 September 2006, Mr Arnoldo Efraín Calle Flores, General Secretary of SUTRABANTRA, was reinstated in his post by a judicial order containing a protective order, after a 30-month legal battle with the Banco del Trabajo; (2) the court had found in favour of the official on two occasions, ordering his reinstatement and the payment of accrued earnings, after finding that the true motivation for his dismissal had been the establishment of the trade union and his participation in trade union activities. Currently the main proceedings are under way before the Supreme Court of the Republic of Peru, which is set to confirm the previous rulings; and (3) despite this, in order to prevent union leader Efraín Calle Flores from working, the Banco del Trabajo illegally assigned him to an inland province, violating the trade union immunity that protects him from such anti-union measures. The union leader complained to the Banco del Trabajo and to the court, but the enterprise once again obstructed his admission to work, alleging that he had abandoned his post, disregarding the fact that there was a judicial protective order in his favour. In these circumstances, taking into account the information sent by the complainant and in particular the judicial decisions in his favour, the Committee requests the Government to take the necessary measures to ensure that the General Secretary of SUTRABANTRA, Mr Efraín Calle Flores, is reinstated in his previous post, with the payment of lost wages, pending the final judgement of the Supreme Court and to keep it informed in that respect. In addition, the Committee urges the Government to send its observations with regard to the other alleged dismissals of officials and members of the SUTRABANTRA union.*

1088. *With regard to the alleged challenge against the union registration of SUTRABANTRA by the Banco del Trabajo, the Committee notes the Government's statements to the effect that the registration of this trade union remains unchanged. The Committee notes the complainant's statements to the effect that the legal challenge to the union registration by the Banco del Trabajo has been definitively rejected by the court in a judgement dated 10 January 2007, but that, nevertheless, the Banco del Trabajo is still refusing to recognize SUTRABANTRA as a legitimate workers' representative body. In these circumstances, the Committee requests the Government to take the necessary measures to ensure that the Banco del Trabajo recognizes SUTRABANTRA as an organization representing the interests of its members.*

1089. *With regard to the alleged refusal of the Banco del Trabajo to negotiate the lists of demands for the years 2004, 2005 and 2006, the Committee notes the Government's statements to the effect that: (1) the Banco del Trabajo indicated its opposition on the grounds that there was another union – SUDEBANTRA – to which some members of SUTRABANTRA also belonged, and signing up to both organizations at the same time was illegal; (2) the Subdirectorate for Collective Bargaining of the Regional Directorate for Labour and Employment Promotion of Piura was dealing with three cases pertaining to negotiations of lists of demands between SUTRABANTRA and the Banco del Trabajo, corresponding to the years 2004, 2005 and 2006; (3) report No. PR-002-2004-DRTPE-PIURA-SDNCIHSO sets out the written administrative proceedings brought by the Banco del Trabajo on 16 August 2004, in which it opposed consideration of the 2004 list of demands presented by SUTRABANTRA because an application to "cancel union registration" had been filed with the First Labour Court of Piura, which has been hearing the case since 18 June 2004 (therefore, as official documents confirmed that the Banco del Trabajo's request for "dissolution of the union" was still pending a ruling from the competent body, the Labour Authority of First Instance in an unnumbered resolution of 17 August 2004 suspended the case until the aforementioned proceedings were resolved); (4) in a document dated 15 September 2004, the trade union made an appeal to challenge the ruling by the Labour Authority, referring the rulings to the Regional Directorate for Labour and Employment Promotion of Piura for a second instance ruling, and ordered that the collective bargaining process continue; (5) at the request of the trade union, the Labour Authority of the Negotiation Subdirectorate forwarded the relevant file to the Technical Administrative Office of the Regional Directorate so that it could carry out a "financial economic study" of the Banco del Trabajo enterprise, but the Banco del Trabajo lodged an "opposition", again alleging that the parties were in a dispute before the court. The Labour Authority accepted the enterprise's opposition motion, because it guaranteed that it had lodged an appeal to annul the judicial proceedings for the cancellation of the union registration; (6) following various administrative and judicial proceedings, the Labour Authority of First Instance in the unnumbered resolution of 17 August 2004, suspended the proceedings relating to the lists of demands for 2005 and 2006, and the negotiation on the lists of demands has been suspended until the case is resolved concerning the request to cancel SUTRABANTRA registration (the complainant organization indicates that this question has now been resolved by a final court decision of 10 January 2007 rejecting the request for cancellation of the registration). The Committee notes the complainant's allegation that, as a result of not recognizing SUTRABANTRA, the Banco del Trabajo has refused to bargain collectively and the lists of demands for the years 2004, 2005 and 2006 are still pending resolution.*

1090. *In these circumstances, the Committee expects that the ongoing case before the courts which led to negotiations on the lists of demands being suspended will be resolved very soon, and requests the Government to endeavour to promote collective bargaining between the parties. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendations

1091. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to keep it informed of the outcome of the judicial proceedings (pending on appeal) concerning the dismissals of union officials Felipe Fernández Flores and Miguel Moreno Avila from the Gloria SA enterprise, and urges the Government to keep it informed without delay of the judicial proceedings concerning the dismissal from the same

enterprise of Mr Fernando Paholo Trujillo Ramírez, about which it has sent no information.

(b) With regard to the anti-union dismissal of Mr Segundo Adán Robles Nunura by the Petrotech Peruana SA enterprise, the Committee expects that the judicial proceedings will be concluded soon, and requests the Government to keep it informed of their outcome.

(c) The Committee requests the Government to take the necessary measures to ensure that the General Secretary of SUTRABANTRA, Mr Efraín Calle Flores, who was dismissed from the Banco del Trabajo, is reinstated in his previous post, with the payment of lost wages, pending the final judgement of the Supreme Court, and to keep it informed in this regard. In addition, the Committee urges the Government to send its observations concerning the other alleged dismissals of union officials and members of the SUTRABANTRA union.

(d) The Committee requests the Government to take the necessary measures to ensure that the Banco del Trabajo recognizes SUTRABANTRA as an organization representing the interests of its members, and to make an effort to promote collective bargaining between the parties.

CASE NO. 2527

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

Complaint against the Government of Peru presented by the Autonomous Confederation of Peruvian Workers (CATP)

Allegations: Dismissal of trade union officers and eviction from their accommodation as a result of the establishment of the Trade Union of Workers of the San Martín Mining Company SA; threats against trade union officers

1092. The complaint is contained in a communication from the Autonomous Confederation of Peruvian Workers (CATP) dated 28 September 2006. The Government sent its observations in communications dated 12 March and 26 October 2007.

1093. 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's allegations

1094. In its communication of 28 September 2006, CATP alleges that on 19 August 2006 representatives of the San Martín Mining Company SA were informed of the establishment and registration of a trade union and its executive in a notarized letter dated 19 August

2006 (attached by the complainant), which stated that the trade union and the list of its officers had been recognized by the labour administrative authority of Lima on 16 August 2006. The CATP adds that on 20 August 2006 a police report was drawn up at the request of trade union officers César Augusto Elías García (general secretary), José Arenaza Lander (defense secretary) and Armando Bustamante Bustamante (press and propaganda secretary) because they had been evicted from their accommodation by order of the general manager of human resources of the San Martín Mining Company SA, who stated that they no longer belonged to the enterprise, according to the police report (attached by the complainant).

1095. According to the allegations, on 21 August 2006, having been informed of the trade union's existence, the San Martín Mining Company SA prevented the abovementioned officers from entering the workplace by posting a notice on the wall at the entrance (also attached by the complainant).

1096. According to the allegations, the general manager of human resources at the enterprise has been pursuing a policy of repeated violation of the right to organize and freedom of association against trade union officers and unionized workers: once he had been informed of the establishment of the trade union, he started harassing and dismissing the workers, falsely accusing them of misconduct.

1097. The CATP states that it has filed complaints concerning these acts with different authorities and that the enterprise refused to attend a meeting with trade unionists on 27 September 2006 under the auspices of the Ministry of Labour. It alleges further that the trade union officers receive threats against their lives and physical integrity from hired thugs who have direct connections with company officials; one of them, identified as Mr Genero Ayaucan Antialion, is acquainted with the general manager and other staff.

B. The Government's reply

1098. In its communications of 12 March and 26 October 2007, the Government states that the Trade Union of Workers of the San Martín Mining Company SA and its executive, represented by its general secretary, Mr César Augusto Elías García, were registered through the automatic registration procedure on 16 August 2006 for the period 30 June 2006 to 29 June 2008 in the register of the Trade Union Registration Division of the General Registration Subdirectorate of the Ministry of Labour and Employment Promotion. On 19 August 2006, representatives of the San Martín Mining Company SA were informed of the establishment and registration of the trade union and its executive, as well as the recognition of the trade union by the labour administrative authority. According to the trade union members, on 20 and 21 August 2006, the enterprise harassed and denied access to the workplace to trade union officers César Augusto Elías García (general secretary), José Arenaza Lander (defense secretary) and Armando Bustamante Bustamante (press and propaganda secretary), as indicated in the certified report issued by the Cañete police station.

1099. The Government also forwards the views of the enterprise, reproduced below:

– the San Martín Mining Company provides services for the execution of mining and construction projects, in which the work is intrinsically temporary; this is especially true of the activities on the site in question, which involve preliminary work on a site for a gas liquefying plant under a contract signed with the client, Perú LNG SRL, located in Pampa Melchorita at km 169, Cañete, the labour for which was recruited under the special regulations governing the civil construction sector. Owing to the temporary nature of work in the sector, the workers recruited for the project are members of the civil construction trade unions of Cañete and Chincha, depending on

where they live, which have site trade union committees at the project. The enterprise points out that it maintains cordial and respectful relations with those trade unions (relevant documents are attached);

– concerning the termination of employment of César Augusto Elías García, José Arenaza Lander and Armando Bustamante Bustamante, this was strictly in keeping with the nature of their civil construction contracts and with paragraph 2 of Ministerial Resolution No. 480, which provides that civil construction workers may be "dismissed" without notice from a site on the weekly closing day. Further, they were informed in memorandum No. 001.06.ADM, dated 19 August 2006, of their termination on grounds that the work they had been recruited for had been completed and the corresponding budget item terminated and nationalized; accordingly, the severance pay due in respect of their length of service had been prepared and they were consequently not allowed to enter the site or to use the accommodation and catering facilities, which are reserved for employees. Concerning recognition of the Trade Union of Workers of the San Martín Mining Company, the enterprise was informed of this after the date on which the employment of César Augusto Elías García, José Arenaza Lander and Armando Bustamante Bustamante was terminated. The enterprise states further that on the date their employment was terminated, they were members of the Civil Construction Workers' Trade Union, as attested to by documents in the company's possession;

– the enterprise states further that the assertions in the complaint concerning alleged threats against trade union officers' lives and physical integrity turned out to be nothing more than talk, and were not based on any convincing proof; given that those making the allegations should provide proof, the enterprise requests that the complaint be rejected for lack of evidence. The enterprise points out that the trade union has not attached any certified copy of police reports or judicial action proving its allegations.

1100. The Government refers to a number of measures taken by the Ministry of Labour and Employment Promotion concerning this case. Specifically, on 19 and 20 September 2006 the Ministry summoned the San Martín Mining Company SA and Perú LNG SRL and representatives of the Trade Union of Workers of the San Martín Mining Company to an out-of-court meeting to be held on 27 September 2006 at the offices of the Regional Directorate for Labour and Employment Promotion in Lima-Callao. Despite the above, on 27 September 2006 only the trade union representatives appeared, and it was placed on record that the employer side, the San Martín Mining Company SA and Perú LNG SRL, did not attend the meeting. In a letter (Ref. No. 518-2007-MTPE/2/12.1), the Regional Labour Directorate in Lima-Callao sent the following information on complaints filed with the Ministry of Labour concerning violation of freedom of association of the workers at the San Martín Mining Company SA:

– In a petition filed under No. 1721129, dated 25 August 2006, Mr César Augusto Elías García requested that an inspection be conducted at the enterprise to verify a case of arbitrary dismissal. On 31 August 2006, the assigned labour inspector went to the premises of the enterprise to carry out the inspection. Paragraph 4 of the inspection report states that "No ordinary or notarized letter giving notice of dismissal, letter of dismissal or letter accusing the worker of serious misconduct was shown. On 21 August 2006, the petitioner was informed verbally that he was to stop working at the Perú LNG Phase II site, owing to termination of the budget item corresponding to the work that he was engaged in. The petitioner has shown a certificate of automatic registration (file No. 132930-06-DRTPELC/DPSC/SDRG/DR) dated 16 August 2006, in which he is named as general secretary of the Trade Union of Workers of the San Martín Mining Company SA."

– In a petition filed under No. 172132, dated 25 August 2006, Mr José Antonio Arenaza Lander requested that an inspection be conducted at the enterprise to verify a case of arbitrary dismissal. On 31 August 2006, the assigned labour inspector went to the premises of the enterprise to carry out the inspection, and found the following, as stated in paragraph 4 of the inspection report: "No letter giving notice of dismissal, letter of dismissal or letter accusing the worker of serious misconduct was shown during the inspection. On 21 August 2006, the petitioner was informed verbally that he was to stop working at the Perú LNG Phase II site, owing to termination of the budget item corresponding to the work that he was engaged in".

– In a petition filed under No. 192560, dated 19 September 2006, Mr Armando Enrique Bustamante Bustamante requested that an inspection be conducted at the enterprise to verify a case of arbitrary dismissal. On 21 September 2006, the assigned labour inspector went to the premises of the enterprise to carry out the inspection, and found the following, as stated in paragraph 4 of the inspection report: "No letter of dismissal or letter giving notice of dismissal was given to the petitioner, who states that on 18 September 2006, he was informed verbally that he was to stop working at the site. I returned to the company headquarters in Lima and asked the person concerned about his situation; the complainant said he had been dismissed, adding that this situation of harassment was due to his holding office as press and propaganda secretary of the Trade Union of Workers of the San Martín Mining Company, and showing me a copy of an attestation submitted by the trade union to the Ministry of Labour and Employment Promotion dated 23 August 2006. The human resources manager, however, stated that the petitioner had not been dismissed, but had been transferred from the site on which he was working to another site of the enterprise, and showed me a transfer record indicating that the petitioner had been transferred on 18 September 2006 from the site where he was working to the company headquarters in San Juan de Miraflores, Lima."

1101. The Government states that, in accordance with section 45 of the regulations under Legislative Decree No. 728, approved by Presidential Decree No. 001-96-TR, the labour administrative authority, at the request of one of the parties, will assist in verifying whether arbitrary dismissal took place, manifested in the unjustified refusal by the employer to allow a worker access to the workplace, and will draw up a record of the outcome. The worker may also request a report from the police, which should indicate the identity and office of the persons involved, the location and the statements of the parties.

1102. The Government points out that the labour administrative authority and, in some cases, the police, may, at the worker's request, verify arbitrary dismissal when the employer unjustifiably refuses to allow the worker to enter the workplace. In the cases of Mr César Elías García and Mr José Antonio Arenaza Lander, the inspection report states that they were verbally informed that they would no longer be employed, while in that of Mr Armando Enrique Bustamante Bustamante, the employer stated that he was not dismissed, but transferred to another site.

1103. The object of the complaint is the reinstatement of the three workers, or the action taken by the Peruvian Government to ensure that the workers' right to freedom of association is respected. If the workers whose employment has been terminated maintain their allegation of dismissal on account of trade union membership, Peruvian labour law affords them the option of filing an action for nullity with the courts since, according to section 29 of the consolidated text of Legislative Decree No. 728, dismissal shall be deemed null and void if it is based on grounds of membership of a trade union or participation in trade union activities. The competence of the labour administrative authority thus ends with the findings of the inspection report, which will serve as evidence should the worker decide to institute judicial proceedings. Determining whether or not the workers were covered by

trade union immunity is a matter for the judicial authority, not the labour administrative authority.

1104. In this regard, the Government points out that in October 2006 the two persons who were dismissed (not Mr Bustamante, who was only transferred) filed proceedings to nullify the dismissal with the ordinary jurisdiction. Both cases are currently pending before the courts; the Committee on Freedom of Association will be informed of the outcome.

C. The Committee's conclusions

1105. *The Committee observes that in this case the complainant alleges, first, the dismissal of three trade union officers (Mr César Augusto Elías García, Mr José Arenaza Lander and Mr Armando Bustamante Bustamante) as a result of the establishment of the Trade Union of Workers of the San Martín Mining Company SA, their eviction from their accommodation on the order of the mining and construction enterprise, and denial of access to the workplace; and, second, threats against the lives and physical integrity of the officers of the trade union by persons connected with managers of the enterprise.*

1106. *Concerning the alleged dismissal of three trade union officers, the Committee notes that according to the Government, the enterprise states that Mr Enrique Bustamante Bustamante was engaged in activities that were intrinsically temporary and that his employment was terminated on 19 August 2006 as a result of completion of the work, and therefore he was not allowed to enter the workplace or to use the housing facilities; the Government points out that according to the enterprise, he was not dismissed but transferred to another site. The Committee observes that, according to the Government, the labour inspectorate verified the record of this trade union officer's transfer to another site on 18 September 2006. The Committee also observes that, according to this trade union officer's statement to the labour inspectorate on 19 September 2006, he considered himself dismissed in the context of harassment on account of his status as a trade union officer, after a conversation with the site manager on 18 September 2006. The Committee recalls the general principle that dismissal of trade union officers on account of their trade union office or activities, even if they are subsequently reinstated, is contrary to Article 1 of Convention No. 98, and could in cases, where dismissal has been proven, amount to intimidation preventing the exercise of their trade union functions; it also recalls that the transfer of trade union officers could obstruct the exercise of trade union activities. It requests the Government to indicate whether trade union officer Mr Armando Enrique Bustamante Bustamante has been regularly employed by the San Martín Mining Company SA since September 2006.*

1107. *Concerning the alleged dismissal of trade union officers Mr César Augusto Elías García and Mr José Arenaza Lander, the Committee notes that according to the Government, the San Martín Mining Company SA states that the reason for termination of their employment on 19 August 2006 was the intrinsically temporary nature of their work and the completion of the work for which they had been employed, and hence they were not allowed to go to work or use the housing facilities; according to the enterprise, Ministerial Resolution No. 480 stipulates that civil construction workers may be "dismissed" without notice from a site on the weekly closing day. The Committee further notes that according to the Government, the enterprise stated that it was only informed of the trade union after the employment of Mr César Augusto Elías García and Mr José Arenaza Lander was terminated on 19 August 2006.*

1108. *The Committee notes the Government's statements in regard to the latter two dismissals to the effect that: (1) the labour inspectorate reported that the enterprise had shown no letter giving notice of dismissal, letter of dismissal or letter accusing the workers of serious misconduct (the workers were informed verbally that they were to stop working on the*

site); (2) according to section 29 of the consolidated text of Legislative Decree No. 728, dismissal shall be deemed null and void if it is based on grounds of membership of a trade union or participation in trade union activities; and (3) the two trade union officers have filed proceedings for nullity (which are currently before the court of appeal) and it is for the judicial authority to determine whether or not they were covered by trade union immunity (in which case the law provides for reinstatement).

1109. *The Committee notes that, according to the Government, the trade union and its executive were registered with the Ministry of Labour and Employment Promotion on 16 August 2006, that the enterprise was informed of this on 19 August 2006 and that the latter admits that the employment of the trade union officers was terminated on that day.*

1110. *The Committee recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 799]. In these circumstances, the Committee requests the Government to inform it of the outcome of the proceedings to nullify the dismissal filed by trade union officers Mr César Augusto Elías García and Mr José Arenaza Lander and expects that the judicial authority will take the above principles fully into account. The Committee expects the judicial authority will hand down a ruling in the near future.*

1111. *Lastly, concerning the alleged threats against the lives and physical integrity of trade union officers, the Committee notes that according to the Government, the enterprise states that these allegations are not supported by any evidence, such as police reports or penal complaints. The Committee observes that the allegations are excessively vague and do not contain any specific information (names of the trade union officers threatened, dates of the threats, etc.) and therefore it will only pursue its examination of these allegations if the complainant organization provides more information.*

The Committee's recommendations

1112. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to indicate whether trade union officer Mr Armando Enrique Bustamante Bustamante has been regularly employed by the San Martín Mining Company SA since September 2006.

(b) The Committee requests the Government to inform it of the outcome of the proceedings (which are currently before the court of appeal) to nullify the dismissal filed by trade union officers Mr César Augusto Elías García and Mr José Arenaza Lander and expects that the judicial authority will take the principles mentioned in the conclusions fully into account. The Committee expects that the judicial authority will hand down a ruling in the near future.

CASE NO. 2519

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

Complaint against the Government of Sri Lanka
presented by
— the Health Services Trade Union Alliance
— the Free Trade Zone and General Services Employees Union
— the Jathika Sewaka Sangamaya
— the Suhada Waraya Sewaka Sangamaya
— the United Federation of Labour
— the Union of Post and Telecommunication Officers
— the Dumriya Podhu Sewaka Sahayogitha Vurthiya Samithiya
supported by
— the International Textile, Garment and Leather Workers' Federation (ITGLWF) and
— the International Transport Workers' Federation (ITF)

Allegations: The complainants allege that the Sri Lanka Ports Authority (SLPA) refused to negotiate wage increment issues, despite several attempts by the complainants to compel negotiations, including a peaceful "work to rule" action in which 14 trade unions participated. They also allege the filing of a complaint by a third party unconnected to collective bargaining and judicial intervention restricting the right to strike of trade unions

1113. The complaint is set out in a communication of 27 September 2006. The International Textile, Garment and Leather Workers' Federation (ITGLWF) and the International Transport Workers' Federation (ITF) affiliated themselves with the complaint in communications dated 30 October and 6 December 2006, respectively.

1114. The Government submitted its observations in communications of 8 February and 14 May 2007.

1115. Sri Lanka 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

1116. In its communication of 27 September 2006, the complainants allege that in March 2006 a dispute over the issue of wage increments arose between the Sri Lanka Port Authority (SLPA) – a state-owned enterprise responsible for the development, maintenance, and operation of the nation's ports, including those of Colombo, Galle and Trincomalee – and several unions representing SLPA workers. The complainants state that they had tried all possible means of resolving this dispute through negotiations, and had written to both the

management of the SLPA and the Minister responsible for ports to ask that their demands be met, or for an opportunity to discuss the matter. Despite these repeated appeals the SLPA and the Minister refused to enter into negotiations on the issue raised.

1117. The complainants subsequently commenced a "work-to-rule" strike action on 13 July 2006, during which normal contractual duties as specified by the service contracts of the workers were performed to the letter, whereas "optional" or additional work was declined. The complainants maintain that the action was totally peaceful, with no incidents of breach of peace reported during the strike period, and that a total of 14 trade unions participated in the said action.

1118. On 19 July 2006 – the peak of the trade union action – the Minister for ports held a news conference, in which he stated that the Government would not negotiate with trade unions with respect to the strike's underlying demands. The Government's refusal to negotiate compelled the striking workers to continue their action. On the evening of 19 July 2006, however, the Minister held discussions with the portworkers and subsequently agreed to grant some of their demands and appoint a committee to look into the others, pledging a final solution to the demands within a period of three months. As a result of the Minister's assurances, the unions decided to suspend their action as of 20 July 2006. Negotiations followed the suspension of the industrial action, during which a number of issues were tabled for discussion. It was amidst these negotiations and positive developments, the complainants allege, that the Joint Apparel Association Forum (JAAF), an association of employers in the apparel sector, brought a legal action before the Supreme Court.

1119. On 21 July 2006, the JAAF filed a petition before the Supreme Court of Sri Lanka claiming that, as a result of the "work-to-rule" trade union action initiated by the port unions, their normal import and export business activities had been affected, and therefore their fundamental right to equality and lawful occupation was being violated by the trade unions. The JAAF therefore sought to quash the trade union action and obtain a requisition order to compel the workers to resume normal working hours.

1120. The complainants state that the JAAF is an organization primarily engaged in the protection and furtherance of the interests of the apparel, fabric and accessory manufacturers, as well as the garment buyers of Sri Lanka. Its membership includes a large number of businesses in the above-noted categories, operating mostly in export processing zones (EPZs) and special economic and tax concession enclaves in Sri Lanka.

1121. On 21 July 2006 the Supreme Court issued an interim order in which, upon consideration of the "prima facie illegality" of the trade union action, and the extensive, ongoing loss suffered by the country as a whole, it granted the JAAF's petition the right to proceed and also granted the JAAF interim relief by prohibiting all trade union action in the ports until 25 July 2006. The Court further ordered the Inspector General of Police to deploy sufficient numbers of officers and, if necessary, to secure the assistance of the armed forces to ensure compliance with the interim order. On 25 July 2006 the Supreme Court issued an order extending the prohibition on trade union action until 25 November 2006.

1122. The complainants state that as a result of the Court order the members of the port trade unions were forcibly compelled to give up their industrial action and offer their services to the SLPA on terms and conditions not of their own choosing, so as to ensure the JAAF's economic stability.

1123. The complainants allege that the Supreme Court's characterization of the unions' action as a "go-slow" action is misleading, false, and arbitrary. No evidence was submitted by the JAAF, or cited by the Court, to establish that members of the 14 port trade unions had worked below the stipulated work norm specified in the service contract they had entered

into with their employer; had such proof been furnished, the complainants maintain, disciplinary actions could have been pursued against the workers concerned, for having violated the terms of the contract. However, not a single worker has been charged with working below the contractually specified work norm, thus proving the legitimacy of the workers' conduct in exercising their rights. The complainants add that the action engaged in by the port unions, whether characterized as a "go-slow" or "work-to-rule" action, is an acceptable form of strike action under the ILO's principles on freedom of association. It is also lawful and protected under national legislation – the Trade Unions Ordinance in particular.

1124. The complainants state that the JAAF is a third party that uses the SLPA's ports for the import and export of apparel and raw materials. As such, it has no standing in the industrial dispute between the 14 port trade unions and the SLPA, as the said dispute is a matter lying strictly within the contractual relationship between the latter two parties. The complainants allege that the JAAF's petition to compel the 14 port unions to resume full productivity levels in fact undermines the right of workers to determine their own terms and conditions of employment freely and voluntarily. The JAAF petition, moreover, rests upon an alleged fundamental right to equality and lawful occupation not recognized by the Constitution.

1125. With respect to the interim order issued by the Supreme Court, the complainants state that for an infringement of fundamental rights to be invoked, the action complained of must be an executive or administrative one, as set out in article 126 of the Constitution. The action complained of, however, is purely industrial action, as recognized in section 2 and protected by sections 26 and 27 of the Trade Unions Ordinance. The complainants maintain that the Court had erred in determining that the trade unions' action amounted to executive or administrative action and, moreover, had established a grave precedent that would curtail the exercise of the right to strike by allowing future third-party petitions claiming fundamental rights violations, such as the one submitted by JAAF, to quash legitimate trade union actions and thus weaken the ability of trade unions to compel employers to engage in collective negotiations. The interim order has also made trade union activists fearful of engaging in future industrial action. In light of the above, the Supreme Court order should be declared to be invalid and inconsistent with the provisions of ILO Conventions Nos 87 and 98.

1126. The complainants further allege that, in response to the major trade union action in the ports, the Government had, on 3 August 2006, amended the Emergency (Miscellaneous Provisions and Powers) Regulation No. 01 of 2005 through the addition of a schedule of services deemed essential. The schedule includes a substantial number of services that are not essential in the strict sense of the term, as defined by the ILO, including the following: services provided by the Central Bank; services connected with the supply of fuel, petroleum products and gas; telecommunications and postal services; services in connection with the export of commodities, garments and other products; and rail and public transport services. The schedule also lists all services required of officers or servants of all ministries, government departments and public corporations – of which the SLPA is one. The amended regulation, the complainants maintain, represents a severe restriction on the right of unions to engage in strikes and other industrial action.

1127. Several annexes are attached to the complaint, including the following documents: a list of trade unions that had participated in the industrial action; a copy of the JAAF's 21 July 2006 petition to the Supreme Court; a copy of the Supreme Court's 21 July 2006 interim order; a copy of the Supreme Court's 25 July 2006 interim order; and a copy of the 3 August 2006 amendment to Emergency (Miscellaneous Provisions and Powers) Regulation No. 01 of 2005. The latter document is herein reproduced as Annex 1.

B. The Government's reply

1128. In its 8 February 2007 communication, the Government states that the industrial dispute between the port trade unions and the SLPA began in March 2006. Negotiations to settle the strike had taken place but failed in the initial stages. During this time the unions did not avail themselves of the dispute mechanism provided for in the Industrial Disputes Act, nor did they submit their demands to the Commissioner General of Labour.

1129. With respect to the legitimacy of the trade union's action, the Government indicates that although the right to strike is recognized by the labour law of Sri Lanka, particularly the Industrial Disputes Act (IDA) and the Trade Union Ordinance (TUO), it is subject to certain limitations, as set out in the relevant sections of the IDA and Chapter 40 of the Public Security Ordinance. Section 32 of the IDA provides for a requisite notice period before calling a strike in an essential service, whereas section 40 restricts the right to strike where such action is in violation of a collective agreement, arbitration award or court decision. Furthermore, new regulations concerning essential services, made under the Public Security Ordinance, were issued on 3 August 2006 – three weeks after the commencement of the port trade unions' action.

1130. The Government refers to a District Court decision, Case No. 7662, issued on 19 July 2006, in which the SLPA had petitioned the Court for an injunction against alleged acts of intimidation, by the union and against workers not involved in the "go-slow" action that commenced on 13 July 2006, as well as an injunction to prevent the unions from continuing with the "go-slow" action itself (a copy of the case is attached to the Government's reply.) According to the Government, both injunctions were granted for a one-week period pending the hearing on the merits.

1131. With respect to the injunctions granted by the District Court, the Government maintains that such temporary restrictions or prohibitions on the right to strike, where industrial action could cause serious hardship to the nation as a whole, are permissible under the freedom of association principles elaborated by the ILO.

1132. The Government adds that subsequent to the injunctive relief granted by the District Court, the Minister in charge of Ports and Aviation held discussions with the unions involved in the go-slow and settled the industrial dispute, following which the SLPA withdrew its case pending before the District Court and freed the trade unions from the restrictions imposed on their action by the District Court.

1133. With respect to the JAAF's fundamental rights application to the Supreme Court on 21 July 2006, the Government states that the SLPA and the Minister of Ports were themselves named as respondents in the action. Among the JAAF's pleadings were that the garment sector exports approximately 1 billion rupees worth of manufactured apparel and imports approximately 500 million rupees worth of raw materials per day, primarily through the port of Colombo. As a result of the unions' action, activity in the Colombo port had fallen by 60 per cent, severely affecting the apparel sector and causing extensive loss to JAAF members. The JAAF further pleaded that union members were also engaging in threats and other acts of intimidation, thus preventing SLPA employees from discharging their normal duties, and that the situation at the Colombo port had engendered a crisis of national proportions, affecting the entire country's economy. The Government indicates that on 21 July 2006 the Court had issued an injunction against the actions and granted the JAAF leave to proceed with its application; hearings for the arguments had been fixed for 19 March 2007. The Government maintains that as the case is sub judice, it is not proper to comment upon its substance. Furthermore, as the complainants have yet to exhaust all possible domestic remedies, the Supreme Court, rather than the ILO, remains the appropriate forum for raising the matters relating to the present complaint.

1134. The Government maintains that, the complainants' representations notwithstanding, the illegality of "go-slow" actions is well-established in Sri Lankan jurisprudence, as demonstrated in numerous judicial cases.

1135. The Government indicates that though it would abide by the recommendations of the ILO supervisory bodies, it cannot interfere with cases pending before the judiciary. Such interference, in the first instance, would be premature, as the Supreme Court has yet to hand down a final decision with respect to the issues raised by the JAAF's application and contained in the present complaint; it would also violate the fundamental rights of the litigants and compromise the entire judicial system. It would therefore be inappropriate for the ILO or any other international body to pass judgement upon a decision of the Supreme Court of Sri Lanka, particularly when the decision in question has yet to be issued.

1136. As concerns the essential services order recently promulgated under the Public Security Ordinance, the Government states that although the 3 August 2006 essential services order referred to by the complainants did include an expanded schedule of services, after its publication, the President had clearly expressed that the said regulation would not be implemented against the trade unions. The order was further discussed at the National Labour Advisory Council and, in view of the concerns expressed by the unions, the President repealed the schedule of services by an order published in *Gazette* notification No. 1456/28 of 4 August 2006. [The latter notification, though referred to as document A5 and said to constitute part of the reply, is not attached to the Government's communication.] The Committee has nevertheless obtained a copy of *Gazette* notification No. 1456/28. The notification is a Presidential proclamation stating that, due to a public emergency in Sri Lanka, the provisions of Part II of the Public Security Ordinance shall come into operation throughout Sri Lanka on 4 August 2006. The notification is herein reproduced as Annex 2.

1137. In its 14 May 2007 communication, the Government attaches a communication of 7 March 2007 from the SLPA indicating that, upon the commencement of the industrial action on 13 July 2006, two meetings between the port authorities and representatives of the trade unions participating in the action were held – on 14 July and 20 July 2006, respectively. The SLPA communication further states that the latter meeting, in which the Minister of Ports participated, produced several decisions, including decisions to refer the salary proposals of the trade unions to the National Salaries and Cadre Commission and obtain their recommendations in three months; to pay allowances to SLPA employees pending the issuance of the Commission's recommendations; and to hold a meeting with the SLPA, the Minister of Ports and the trade unions to review the progress made once in every three months.

C. The Committee's conclusions

1138. *The Committee notes that the present case involves the following allegations: a court-ordered injunction against an alleged go-slow action initiated by several trade unions in ports run by the SLPA, and the amendment to the Emergency (Miscellaneous Provisions and Powers) Regulation No. 01 of 2005 so as to include an expanded schedule of services deemed to be essential.*

1139. *The Committee first notes the Government's statement that it would be inappropriate for it to pass judgement, as a suit concerning these matters was still pending before the Supreme Court. In this respect, the Committee recalls that although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006,*

para. 30 of Annex 1]. The Committee, while bearing in mind the fact that certain matters raised in the complaint are currently pending before the courts, and while respecting the independence of the courts and due legal processes under way, shall therefore proceed with its examination of the case.

1140. *The Committee notes the complainants' allegations that, following a dispute with the SLPA over wage increments, 14 trade unions commenced a work-to-rule action on 13 July 2006. Discussions between the unions and the Minister of Ports were held on 19 July 2006, in which the Minister agreed to grant some of the unions' demands and appoint a committee to examine the others; subsequent to these discussion the unions decided to suspend their action as of 20 July 2006. On 21 July 2006, however, the JAAF – an employers' association that is not a party to the dispute filed a petition before the Supreme Court of Sri Lanka seeking an injunction against the action initiated by the unions and claiming that, as a result of the action, their normal import and export business activities had been severely affected, thus violating their fundamental right to equality and lawful occupation. The Government, for its part, states that the SLPA had sought an injunction against the unions' action and was granted a one-week injunction by the Colombo District Court on 19 July 2006. The SLPA subsequently withdrew its case on the merits still pending before the District Court, but was then named – together with the trade unions and the Minister of Ports – as a respondent in a petition before the Supreme Court brought by the JAAF on 21 July 2006. The Government adds that in its petition the JAAF pleaded extensive financial loss to its members as a result of the reduced activity caused by the trade unions' action. On 21 July 2006 the Supreme Court, upon consideration of the "prima facie illegality" of the trade union action and the extensive loss suffered by the nation as a whole, issued an injunction against the industrial action and granted the JAAF leave to proceed with its fundamental rights action; hearings for the said action had been scheduled for March 2007.*

1141. *The Committee notes that, in granting the injunction against the go-slow action, the Supreme Court had cited the extensive loss to the nation as a whole as a factor in its determination. Further noting the Government's indication that temporary restrictions on the right to strike are permissible where industrial action could cause serious hardship to the nation as a whole, the Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term – that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population [see **Digest**, op. cit., para. 576]. To determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population [see **Digest**, op. cit., para. 581].*

1142. *The Committee recalls that, generally speaking, ports do not constitute an essential service in the strict sense of the term [see **Digest**, para. 587]. The Committee further recalls that what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population. Finally, the Committee recalls that the principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an "essential service" in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population [see **Digest**, op.cit., paras 582–583]. The Committee observes, that the strike action had lasted for 6 days before the issuance of the District Court's injunction, and that – apart from the JAAF's pleading of economic loss suffered as a result of the action – no*

evidence has been put forward to establish the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population. In addition, the Committee observes, with concern, that the injunction would appear to have an extended validity until the final hearing by the Supreme Court, first scheduled for October 2006 and later postponed until March 2007. In these circumstances, the Committee is inclined to view the restriction placed on the portworkers' action by the injunction issued by the Supreme Court as contrary to the principles set out above.

1143. *As concerns the alleged illegality of the go-slow action, the Committee recalls that, regardless of whether the action in question is a work-to-rule or actually a go-slow, it has always recognized the right to strike by workers as a legitimate means of defending their economic and social interests, and that various types of strike action (wild-cat strikes, tools-down, go-slow, working to rule and sit-down strikes) fall within the scope of this principle; restrictions regarding these various types of strike action may be justified only if the strike ceases to be peaceful [see* ***Digest****, op. cit., para. 545]. Noting that a hearing for the JAAF's application had been scheduled for March 2007, the Committee requests the Government to indicate whether a final decision on the question of the alleged go-slow action has been rendered, and if so to transmit a copy of the Supreme Court's judgement. Should the case still be pending before the Supreme Court, the Committee requests the Government to take the necessary measures to expedite the judicial process and ensure that the Committee's conclusions, particularly those concerning the exercise of the right to strike, are submitted for the Supreme Court's consideration.*

1144. *As for the essential services order, the Committee notes that the schedule contained in the Emergency (Miscellaneous Provisions and Powers) Regulation No. 01, as amended on 3 August 2006, enumerates a number of services not considered essential in the strict sense of the term, including services in the petroleum sector; the postal service; the Central Bank; export services; rail and public transportation; public corporations; tea, coffee and coconut plantations; and broadcasting services. As regards workers in public corporations, the Committee recalls that public servants in state-owned commercial or industrial enterprises should have the right to negotiate collective agreements, enjoy suitable protection against acts of anti-union discrimination and enjoy the right to strike, provided that the interruption of services does not endanger the life, personal safety or health of the whole or part of the population [see* ***Digest****, op. cit., para. 577]. Although the Government indicates that the schedule of services had been repealed on 4 August 2006, the Committee observes that Gazette notification No. 1456/28 (Annex 2) does not appear to have done so as it apparently only states that the provisions of Part II of the Public Security Ordinance shall come into operation on 4 August 2006. The Committee therefore requests the Government, in consultation with representatives of workers and employers organizations, and taking into account the particular circumstances in the country, to review and take the necessary measures to amend the schedule of essential services provided for in Emergency (Miscellaneous Provisions and Powers) Regulation No. 01, as amended on 3 August 2006, if it is indeed still in force, so as to bring it into conformity with Conventions Nos 87 and 98. If the schedule has since been repealed, the Committee requests the Government to provide a copy of a the repealing order.*

1145. *Finally, the Committee reminds the Government that it may avail itself of the technical assistance of the Office.*

The Committee's recommendations

1146. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to indicate whether a final decision to consider the question of the alleged go-slow action has been rendered, and if so to transmit a copy of the Supreme Court's judgement. Should the case still be pending before the Supreme Court, the Committee requests the Government to take the necessary measures to expedite the judicial process and ensure that the Committee's conclusions, particularly those concerning the exercise of the right to strike, are submitted for the Supreme Court's consideration.

(b) The Committee requests the Government, in consultation with representatives of workers and employers organizations, and taking into account the particular circumstances in the country, to review and take the necessary measures to amend the schedule of essential services provided for in Emergency (Miscellaneous Provisions and Powers) Regulation No. 01, as amended on 3 August 2006, if it is indeed still in force, so as to bring it into conformity with Conventions Nos 87 and 98. If the schedule has since been repealed, the Committee requests the Government to provide a copy of a the repealing order.

(c) The Committee reminds the Government that it may avail itself of the technical assistance of the Office.

Annex 1

The *Gazette* of the Democratic Socialist Republic of Sri Lanka – Extraordinary (No. 1456/27)

(Thursday, 3 August 2006)

Part I: Section (I) – General

Government notifications

The Public Security Ordinance (Chapter 40)

REGULATIONS made by the President under section 5 of the Public Security Ordinance (Chapter 40).

Mahinda RAJAPAKSA,
President,
Colombo, 3 August 2006.

Regulations

The Emergency (Miscellaneous Provisions and Powers) Regulation No. 01 of 2005 published in Gazette Extraordinary No. 1405/14 of 13 August 2005 and deemed to be in force by virtue of Section 2A of the Public Security Ordinance, and amended from time to time, is hereby further amended as follows:

(1) by the amendment of regulation 2 of that regulation by the insertion immediately after definition of the expression "emergency regulation" of the following definition:

"'essential service' means any service which is of public utility or is essential for national security or for the preservation of public order or to the life of the community and includes any Department of the Government or branch thereof, which is specified in the Schedule hereto and shall also include any service which may at any time thereafter be declared in terms of regulation 40 of these regulations";

(2) by the insertion immediately after regulation 39 of those regulations of the following new regulation:

40. (1) Where any service is declared by order made by the President under regulation 2 to be an essential service, any person who, on or after 13 August 2005 was engaged or employed in any work in connection with that service –

…

(b) fails or refuses after the lapse of one day from the date of such Order, to perform such work as he may from time to time be directed by his employer or a person acting under the authority of his employer to perform at such time or within such periods as may be specified by such employer or such person for the performance of such work (whether such time or period is within, or outside normal working hour or on holidays) he shall, notwithstanding that he has failed or refused to so attend or to so work in furtherance of a strike or other organized action –

(i) be deemed for all purposes to have forthwith terminated or vacated his employment, notwithstanding anything to the contrary in any other law or the terms and conditions or any contract of employment; and

(ii) in addition, be guilty of an offence.

…

(4) Where the President is of the opinion that the members of any organization are committing, aiding and abetting the commission of any act referred to in paragraph (3) of this regulation, he may by Order published in the *Gazette* declares such organization to be a proscribed organization;

…

(3) by the addition immediately at the end of these regulations, of the following Schedule:

"Schedule

(a) the services provided by the Central Bank or any banking institution as defined in subsection (1) of Section 127 of the Monetary Law Act (Chapter 422), or the State Mortgage and Investment Bank, established under the State Mortgage and Investment Bank Law, No. 13 of 1975;

(b) all services, work or labour of any description whatsoever necessary or required to be done in connection with the maintenance and the reception, feeding, nursing care and treatment of patients in hospitals, dispensaries and other institutions, under the Ministry of Health and Women's Affairs;

(c) all services connected with the supply or distribution of fuel, including petroleum products and gas;

(d) all services connected with the supply of electricity;

(e) all services, work or labour of any description whatsoever, necessary or required to be done in connection with the maintenance of postal and telecommunications services, including the overseas telecommunication services;

(f) all services, work or labour of any description whatsoever necessary or required to be done by officers or servants of all Ministries, Government Departments and Public Corporations;

(g) all services, work or labour of any description whatsoever necessary or required to be done in connection with the maintenance of road, rail and other public transport services;

(h) all services, work or labour of any description whatsoever necessary or required to be done in connection with the maintenance and management of tea, rubber and coconut plantations or the production and manufacture of tea, rubber and coconut;

(i) all services, work or labour of any description whatsoever necessary or required to be done in connection with the export of commodities, garments and other products;

(j) all services, work or labour of any description whatsoever necessary or required to be done in connection with the maintenance of all broadcasting and television services;

(k) all services, of any description, necessary or required to be done in connection with the sale, supply or distribution, of any article of food or medicine or any other article required by a member of the public."

Annex 2

The *Gazette* of the Democratic Socialist Republic of Sri Lanka – Extraordinary (No. 1456/28)

(Friday, 4 August 2006)

Part I: Section (I) – General

Proclamations &c., by the President

A proclamation by His Excellency the President

WHEREAS I am of opinion that by reason of a public emergency in Sri Lanka, it is expedient so to do, in the interests of public security, the protection of public order and the maintenance of supplies and services essential to the life of the community;

Know ye that, I Mahinda Rajapaksa, President, by virtue of the powers vested in me by Section 2 of the Public Security Ordinance (Chapter 40) as amended by Act No. 8 of 1959, Law No. 6 of 1978 and Act No. 28 of 1988, do by this Proclamation declares that the provisions of Part II of that Ordinance, shall come into operation throughout Sri Lanka on 4 August 2006.

Given at Colombo on 4 August 2006.

By His Excellency's command,
Secretary to the President.

CASE NO. 2501

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

Complaint against the Government of Uruguay presented by — the National Federation of Secondary Education Teachers and — the Association of Secondary Education Teachers – Montevideo branch (ADES)

Allegations: The complainant organizations allege acts of anti-union persecution against members of the Montevideo Teachers' Association

1147. This complaint is contained in a communication from the National Federation of Secondary Education Teachers and the Association of Secondary Education Teachers – Montevideo branch (ADES) dated 16 June 2006. The complainant organizations sent additional information in a communication dated August 2006. The Government sent its observations in a communication dated 28 February 2007.

1148. Uruguay 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

1149. In its communications dated 16 June and August 2006, the National Federation of Secondary Education Teachers and the ADES state that the collective right to work in Uruguay constitutes a true structure, in both the doctrinal and the jurisprudential senses. Some very concrete and specific legal components have gone into creating this structure, which work together to support it normatively, programmatically and in principle. In this respect, the most important standards are article 57 of the Constitution of the Republic, which establishes that the law shall promote the organization of trade unions, granting them privileges and issuing standards to recognize their legal personality, and ILO Conventions Nos 87, 98, 151 and 154 on freedom of association, the right to organize and collective bargaining.

1150. The complainants add that at the national level, the Parliament of the Republic recently approved the Freedom of Association Protection Act, No. 17940 of 2006, as a result of which actions or omissions that violate the provisions of the abovementioned standard are declared null, and concrete procedures are provided to protect the exercise of freedom of association. They allege that these very standards were violated through acts of an anti-union nature that discriminated against some of the teachers belonging to the Secondary Education Council, a decentralized body reporting to the Central Executive Council of the National Public Education Administration, a public body governing public secondary education in Uruguay. These teachers have been prejudiced in their employment as a consequence of the normal exercise of trade union activities.

1151. The complainants explain that everything began in August 2004 at Liceo No. 4 in Montevideo, an educational establishment providing secondary education. The head teacher had coordinated with the police force to detain a number of adolescents as a way of tackling the drug problem. In view of the detention, Dinorah Siniscalchi, a teacher who had learned what was happening and was alarmed at the severity of the action taken, contacted the parents to inform them that their children had been detained and were being questioned by narcotics experts. It should be noted that, at that time, this official was a distinguished trade union activist at the study centre, who had come from the executive committee of the Montevideo Teachers' Association. The situation prompted consternation and alarm in the educational community, particularly at the centre itself and, obviously, the official concerned was identified and met with the disapproval of the head, who sanctioned her, a sanction that was subsequently officially approved by the Secondary Education Council.

1152. The complainants indicate that the rest of the officials expressed considerable indignation following this event and it served as a catalyst for resistance and protests by all the centre's trade union members, including the union core. From then on, the head also began to single out other teachers, those with trade union representative status and representatives of the trade union core at Liceo No. 4. In this context, four teachers – Fernando Moreno, Winston Mombrú, Pedro Balbi and the teacher mentioned above – were professionally prejudiced through the deliberate and brutish demolition of their annual assessments.

1153. The complainants state that the head of the establishment has control over an instrument that is crucial for teachers' professional status: the assessment or annual evaluation of performance, contained in the annual report. This assessment is exceedingly important for the position of teachers on the hierarchical scale and consequently for their chances of improving their conditions of work, including their salary. The assessment of the teacher basically constitutes what is called teacher aptitude. Teacher aptitude is the key to the

hierarchical scale in teaching and, given its impact, is fundamental for teachers to be able to advance their careers in the ANEP system. Moreover, even the Teaching Staff Rules in Uruguay expressly establish (article 40) a minimum of 51 teacher aptitude points as a prerequisite for promotion. A teacher who does not achieve that score can be declared incompetent by a special board of inspectors.

1154. The complainants allege that the head of Liceo No. 4 in Montevideo did not change his anti-union discriminatory attitude. From the time of the events prompted by the detention of the youths referred to above and the resulting trade union action, he began to use annual performance reports (assessment of teaching aptitude) to repress those with trade union representative status. These affiliates had previously had excellent assessments and had had a percentage of their classes assessed at almost 100 per cent for the year. Their assessments were undercut by 20 to 30 points. But the most striking aspect was the audacity with which the management introduced anti-union elements into the reports, in some cases even calling for criminal sanctions. According to the complainants, the fact that the students might learn of the trade union actions appeared to irritate management considerably. In 2005, it used the 2004 annual report to question the affiliates' ethics, following their involvement in propaganda activities and meetings in connection with what happened with Dinorah Siniscalchi.

1155. The complainants note that the situation became increasingly untenable by the month, with the mood of anti-union repression continuing to intensify, even today. They add that support for this situation from the highest authorities is a matter of concern. The assessments referred to were not amended by the corresponding appeals body: the assessment panel for physics (the subject applicable to the teachers in question) did not make the slightest reference to the impertinence or inadmissibility of introducing elements of anti-union discrimination into teacher assessments. The previous three years were simply averaged to assess the affiliates. This allowed them to remain in the "excellent" range owing to their previous assessments, but keeping the assessment awarded by the management. In other words, a manifestly anti-union act was not overridden.

1156. However, the situation of repression did not end and instead continued to intensify with the passage of time. More seriously still, the Secondary Education Council's own authorities lent their support to the practices of the management of Liceo No. 4, which lodged a complaint against one of the teachers involved – Pedro Balbi – who, without any reliable evidence had administrative proceedings (a disciplinary procedure to apply sanctions that can culminate in the removal – dismissal – of the official) instituted against him. The form in which these proceedings were conducted was unusual; on the basis of a gross manipulation of the evidence, the teacher ended up being suspended for 15 days. Even more seriously, a climate of persecution and anti-union discrimination clearly emerged from statements made by the head himself. In a statement more than 20 pages long, he refers to all the trade union activity conducted, to the meetings held and to the propaganda activities under way, making it abundantly clear that the reasons underlying the friction between the teacher under investigation and himself relate to issues of a trade union nature.

1157. The complainants indicate that in its various reports the Secondary Education Legal Division did not make a single reference to the anti-union climate surrounding the pre-trial proceedings instituted against Pedro Balbi. On top of that, the Council's own authorities chose to remain silent on those matters, and despite the sloppy way the "evidence" was dealt with and assessed, it was decided to sanction the teacher. Then, to add insult to injury, the authorities of the Association of Secondary Education Teachers lodged an administrative complaint against the head of Liceo No. 4 regarding the whole situation (Case No. 3/82/06), yet none of these complaints was responded to or ruled on by the Secondary Education Council. The complainants add that the management of Liceo No. 4 remains hostile. It resumed its persistent anti-union stance following a propaganda

campaign involving the distribution of information outside Liceo No. 4 and following a teacher–student meeting in which ADES leaders participated in the framework of a stoppage arranged by the Inter-Trade Union Assembly–Workers' National Convention (PIT–CNT) in defence of the Freedom of Association Protection Act.

1158. They allege that a teacher who also participated in that event, Adriana Romano, was included in the group of workers being discriminated against for their trade union beliefs. The management of the Liceo again intensified its attacks, further reducing the points scores of the workers in question, now accusing them in the annual report of committing grave disciplinary offences, including "violation of the principle of laicism" and "of the moral and civic independence of the pupil", etc., all grounds for dismissal, and even requesting administrative investigations into the same. Management's persistence in continuing to reduce the points scores (now with those of 2005) seems to be without bounds and, if this attitude continues, the desired result will obviously be achieved as, by taking the average of the last three years for the final assessment, reports will ultimately be taken into account in which assessments in the "excellent" range will be reduced to points scores dangerously close to the "incompetent" range. If this situation of discrimination is not stopped it will endanger the labour stability of the trade union representatives at Liceo No. 4 and the current members of the executive bodies at the various trade union levels. And, of course, it also endangers the existence of the trade union core of the ADES in that education centre.

B. The Government's reply

1159. In its communication dated 28 February 2007, the Government states that proceedings conducted by the Ministry of Education and Culture and by the General Labour and Social Security Inspectorate of the Ministry of Labour are still pending. Once finalized, the Government will be in a position to present its observations. As to the proceedings before the General Labour Inspectorate of the Ministry of Labour and Social Security, it provides the following information:

– to find out about the complaint made jointly by the National Federation of Secondary Education Teachers and the ADES, the Government began to process the administrative proceedings to determine the existence or otherwise of acts in violation of the Labour Relations (Public Service) Convention, 1978 (No. 151), in respect of the facts set forth in the complaint. In this connection, it was decided by administrative decision to transfer the file to the trade union and the accused party; FENAPES–ADES was notified on 2 August 2006 and ANEP–CES on 15 August 2006;

– once notified of the administrative decision, the parties took note of the transfer and, in accordance with the provisions of Decree No. 500/991 relating to the administrative procedure, a decision dated 11 September 2006 called for evidence to be presented;

– both parties offered documentary and oral evidence and requested official written evidence and reports;

– a decision dated 10 October 2006 ordered that the evidence offered be processed and hearings were scheduled to receive witnesses, the first hearing being scheduled on 15 November 2006;

– in this connection, on 26 February 2007, the last of the witnesses was received, thus completing all the evidence;

– on 27 February 2007, the proceedings were transferred to the parties, in keeping with the administrative decision.

1160. The Government adds that, in accordance with the above, it should be noted that, as soon as the General Labour and Social Security Inspectorate of the Ministry of Labour was informed of the accusations, it acted as quickly as possible within the time frames established by Decree No. 500/991 which regulates administrative procedures. It should also be noted that the trade union did not file the complaint before the Ministry of Labour, but instead chose to go directly to the ILO, which explains the inappropriate timing of the administrative proceedings with respect to when the reported events took place.

1161. Lastly, the Government reiterates that other proceedings are pending with the Ministry of Education and Culture and that the accused ANEP–CES instituted proceedings immediately, resulting in administrative proceedings to clarify and rule on the accusations. Consequently, the Government states that it did not remain uninvolved in the subjects raised by the complainant organization, but rather acted immediately within the framework in which the events occurred and conducted the corresponding procedures within that same framework with the guarantee of due process.

C. The Committee's conclusions

1162. *The Committee observes that, in this case, the complainant organizations allege that as from August 2004, when a trade unionist teacher affiliated to the Montevideo Teachers' Association convened parents of pupils at the educational establishment Liceo No. 4 in Montevideo to tell them that their children were being detained by the police narcotics squad, the authorities of the establishment sanctioned the trade unionist in question (Dinorah Siniscalchi) and, following a related protest by the trade union, they began to take anti-union measures (low assessments in annual reports, suspensions and the institution of proceedings that can culminate in dismissal) prejudicial to other teachers affiliated to the trade union who had trade union representative status (Fernando Moreno, Winston Mombrú, Pedro Balbi and Adriana Romano).*

1163. *The Committee notes the Government's statement that: (1) proceedings (investigations) are being conducted by the Ministry of Education and Culture and by the General Labour Inspectorate of the Ministry of Labour and Social Security in respect to the allegations in this case; (2) in relation to the investigation pending before the General Labour Inspectorate, on 27 February 2007, the proceedings were transferred to the parties, in keeping with the administrative decision; and (3) as soon as the General Labour Inspectorate was informed of the accusations (the trade union did not file the complaint with the Ministry of Labour, but rather directly with the ILO and this explains the inappropriate timing of the administrative proceedings with respect to when the events took place) it acted as quickly as possible.*

1164. *This being the case, the Committee expects that the investigations under way will determine why sanctions were imposed and various measures were taken against the members of the Montevideo Teachers' Association in question and requests the Government, if this is found to have occurred for anti-union reasons, to take measures to lift them immediately. Furthermore, the Committee hopes that the proceedings will be concluded very soon and asks the Government to keep it informed of the final result of the investigations under way and of any related appeals lodged.*

The Committee's recommendation

1165. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

> ***The Committee expects that the investigations under way will determine why the authorities of Liceo No. 4 in Montevideo imposed sanctions and took various measures against the members of the Montevideo Teachers' Association, mentioned by name in the complaint, and requests the Government, if this is found to have occurred for anti-union reasons, to take measures to lift them immediately. Furthermore, the Committee hopes that the proceedings will be concluded very soon and asks the Government to keep it informed of the final result of the investigations under way and of any related appeals lodged.***

CASE NO. 2530

DEFINITIVE REPORT

Complaint against the Government of Uruguay presented by the Uruguayan Hauliers' Federation (ITPC)

Allegations: The complainant objects to a resolution issued by the Ministry of Labour and Social Security which declared road transport activities to be an essential service, and to police intervention to break up meetings held by hauliers

1166. The complaint is contained in a communication from the Uruguayan Hauliers' Federation (ITPC) of November 2006. The Government sent its observations in a communication dated 9 April 2007.

1167. Uruguay 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

1168. In its communication of November 2006, the ITPC objects to the resolution issued by the Ministry of Labour and Social Security on 25 October 2006 which declared road transport to be an essential service. The resolution in question stipulates the following:

> The Ministry of Labour and Social Security declares that:
>
> 1. The following road transport activities governed by the Ministry of Transport and Public Works are deemed to be essential services and shall be provided in the manner established in the preambular paragraphs to the present resolution:
>
> (a) general distribution of fuel;
>
> (b) transport and distribution of foodstuffs and products required for their production;

(c) transport and distribution of perishable goods;

(d) activities guaranteeing normal operations at commercial ports and airports;

(e) transport of medical supplies and waste;

(f) any other transport that the Ministry of Labour and Social Security considers to involve the consequences referred to in the sixth preambular paragraph to the present resolution.

2. The aforementioned essential services shall be provided under the monitoring, guidance and responsibility of road transport enterprises.

3. The relevant ministries and bodies shall be charged with ensuring effective compliance with the provisions of this resolution.

4. The present resolution shall come into effect on the date of its adoption and shall be valid for a period of up to thirty (30) days.

5. The present resolution shall be duly announced, published and so forth.

The ITPC indicates that the provisions of the resolution are contrary to the Committee on Freedom of Association's definition of an essential service.

1169. The ITPC points out that article 57 of the Constitution states that strikes are a trade union right. This recognition resulted from the inclusion of the social dimension in the traditional declarations of individual rights, duties and guarantees. This article does not create a right, but recognizes its existence by accompanying it with guarantees against possible legislative restrictions. Furthermore, it is recognized as a fundamental right of the individual. Although it is debatable whether lockouts are protected under article 57 of the Constitution, they are specifically provided for under section 3 of Act No. 13720 which governs the procedure. Lockouts are clearly a means of industrial action available to employers, although they are not widely used because of the high financial costs involved. It cannot be denied that the total or partial closure of an enterprise by the employer as a temporary means of exerting pressure for bargaining purposes is at present lawful according to the Uruguayan legal system.

1170. The ITPC indicates that it is a second-level association to which 19 first-level organizations are affiliated, together representing the entire road transport sector in Uruguay. The ITPC was granted legal personality by the Ministry of Education and Culture on 26 September 2001. In the same year, Act No. 17296 provided for ITPC representation in a state body for monitoring the legality and development of freight transportation. According to legal provisions, this body also has an advisory role vis-à-vis the executive branch. The ITPC is thus clearly the legitimate representative of the sector at all levels. In this context, the ITPC has been requested by the public and private sectors to actively participate in all activities directly or indirectly relating to freight transportation. Specifically, the ITPC is represented on the Higher Tripartite Council, the highest deliberative body on labour issues in Uruguay. Furthermore, at the request of the Ministry of Labour and Social Security, the ITPC was involved in drafting the report on the level of compliance with international labour Conventions in Uruguay, which, through the Department for Foreign Affairs, is currently being presented to the United Nations. It can therefore be stated that this occupational organization is recognized for promoting the professionalization of workers and entrepreneurs in developing the sector and for seeking full compliance with state regulations.

1171. The ITPC indicates that, soon after taking office, the Government raised expectations in all the productive sectors in the country with regard to establishing a price differential for the fuel generally used, namely diesel, which is very expensive in Uruguay, where it costs 86 per cent more than in other countries in the region, such as Argentina. For many months, during long meetings attended by the ITPC, discussions were held on how to implement

the price differential, but they did not result in a concrete proposal. The ITPC indicates that, on 28 September 2006, by Decree No. 347/2006, the Government stipulated that the price of diesel would be increased by 1.053 pesos per litre in order to generate a fund to subsidize a price reduction for tickets on public passenger transport services. The ITPC emphasizes that it is not opposed to the measure to reduce ticket prices on public passenger transport, only to an increase in the price of diesel, the Government itself having raised expectations that it would be reduced, on the contrary. The ITPC considers that, while it is necessary to take steps to encourage the development of public services, these must be accompanied by measures that promote and facilitate the development of the country's productive sectors. In this case, on the contrary, the manner in which the Government implemented a reduction in ticket prices has a direct negative impact on the productive sectors that have to bear the consequences of the increase in the price of diesel.

1172. In addition, the Government has drafted a tax reform bill. Although the bill is currently under discussion in Parliament, its adoption is imminent. Once this law is adopted, all of the previously established exemptions will be abolished and, once it comes into force, only those provided for in the new law will be valid. Consequently, when this law – which does not incorporate the sector's gains – comes into force in 2007, these gains will be lost irretrievably, without any alternative solution. These gains were gradually achieved over years of negotiations in which the Government understood that meeting the hauliers' demands would enable them to remain in the market and to be moderately competitive at the regional level, given that business running costs in Uruguay are very high.

1173. The ITPC indicates that, given this situation and upon becoming aware of Decree No. 347/2006, in view of the announced increase in the price of diesel, organizations representing the sector throughout the country assembled and decided to propose alternative measures to the Government with a view to solving the sector's problems and, if solutions were not reached through negotiations, to make use of employers' legitimate and legally recognized right to suspend activities. Negotiations with the Government resulted in a proposal that did not reflect the hauliers' main demands and which, although accepted when put to the hauliers for consideration, were considered a far cry from the industry's proposals to the Government. Consequently, the hauliers decided in assembly to hold a stoppage beginning on 23 October 2006.

1174. It should be noted that, during the stoppage, and despite the fact that the services provided by the sector are not public services, the ITPC took the necessary measures to guarantee the provision of services which ensure the health, food supply and safety of individuals and other fundamental safeguards so that the action taken would not have any negative impact on the population. On a permanent basis, delegates from various occupational organizations checked that the necessary services were being provided. The ITPC is in a position to prove that the services provided exceeded what are termed essential services. On the second day of the stoppage, the National Administration for Fuel, Alcohol and Portland Cement (ANCAP) sent the ITPC a list of services that had to be provided during the stoppage. The organizations observed that many of the services on the list were already being provided, and, upon receipt of the request, hauliers began to provide the rest of the services requested by the ANCAP.

1175. As an example, the ITPC adds that, when fishing vessels arrived at the port in Montevideo, all the perishable goods on board were unloaded. From the beginning of the stoppage, milk was collected from dairy farms and transported to distribution outlets for consumption, and the public and the Government were informed that this service was being maintained. Similarly, all services relating to hospitals, establishments providing snacks for low-income people, and so on, were also maintained. In order to guarantee the provision of services, each vehicle belonging to enterprises involved in the stoppage was authorized to

provide the specific service in question. The Government knew that these services were being maintained. The provision of these services was also announced in the media.

1176. The ITPC alleges that, despite the above, and in clear disregard for employers' rights, on 25 October 2006 the Government declared freight transportation to be an essential service, in blatant violation of the rights established by law. The aforementioned resolution on essential services reflects the Government's unjustifably broad determination of essential services, which is clearly at odds with the accepted definition. It should also be noted that the Government which, shortly after taking office repealed Decrees Nos 512/1966 of 19 October 1966 and 286/2000 of 4 October 2000 which provided for police intervention in the event of sit-ins during strikes, ordered police intervention during this stoppage after having issued the decree on essential services of 25 October 2006. The police intervened in some rural departments of the country and broke up peaceful gatherings of hauliers, thus forcing the sector to hold a stoppage so as to avoid unwanted confrontations.

1177. The ITPC indicates that the executive branch did not provide justification for the measures taken. Although the resolution states that stoppage leads to shortages of vital supplies, these must be defined in order to determine whether their provision is actually essential for the life, safety or health of the population. The preambular paragraphs to the resolution make no reference to this, and the items listed in section 1 by no means constitute essential services to safeguard the provision of vital supplies to the population. With regard to the content of the preambular paragraphs to the effect that the magnitude of the action seriously affects public order, the Government also failed to specify the manner in which public order was affected so as to justify the rapid (48 hours after the stoppage began) and inaccurate declaration that the suspended services were essential. In summary, the Government did not provide justification for the resolution and failed to specify clearly the supplies curtailed by the stoppage so as to endanger the life, health or safety of the population.

1178. According to the ITPC, through this resolution on essential services, the Government has violated the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by restricting freedom in this regard, which, as previously mentioned, is recognized by law. The Committee itself states that a non-essential service can become essential if the duration of the strike is such as to endanger the population. However, the case in question cannot by any means, or from any standpoint, be described as being one of these specific cases in which trade union action could be restricted. The dispute lasted for two days, which is not long enough for a non-essential service to become essential and therefore to be restricted. A minimum transportation service was maintained throughout the bargaining process. The Government is innovating in this field by declaring essential a service that the Committee on Freedom of Association considers to be non-essential. Furthermore, considering the duration of the dispute, the service did not become essential.

1179. Lastly, the ITPC indicates that the situation at issue constitutes an unlawful restriction enforced by the Government on the free exercise of trade union activities, which are protected by Convention No. 87 and Act No. 13720, and is contrary to the decisions of the Committee on Freedom of Association.

B. The Government's reply

1180. In its communication of 9 April 2007, the Government recalls that the complaint refers to the declaration of essential services concerning specific road transport activities (resolution of 25 October 2006 of the Ministry of Labour and Social Security and the Ministry of Transportation and Public Works). In this respect, with regard to the events referred to by the ITPC, the Government emphasizes that the document submitted refers to the expectations raised by the Government in all productive sectors with regard to establishing

a price differential for the fuel they commonly use (diesel). Yet Decree No. 347/2006 of 28 September 2006 stipulated that the price of the fuel in question would be increased by 1.053 pesos per litre in order to generate a fund to subsidize a price reduction for tickets on passenger transportation throughout the country. According to the Government, this account fails to mention an element of the utmost importance, namely that the increase in the price of diesel fuel was accompanied by another, previously announced, government measure concerning the promotion of a bill that would substantially amend the tax component of the price of the fuel used in the sector concerned. This tax reform consists of replacing the specific internal tax by a value added tax, thus providing the sector with a tax abatement that is substantially higher than the current level and – in practice – results in the fuel price reduction demanded by the organization concerned.

1181. The Government points out that it is necessary at the outset to establish the legal nature of the industrial action at the heart of the dispute, given that the complaint confuses and refers to different concepts (strikes and lockouts). The case under discussion concerns a lockout, which is generally considered as a lawful means of industrial action by employers. A lockout can take the form of closure of an enterprise. This case does not involve a defensive lockout (targeted at workers), but rather a suspension of the services provided by the employer in protest against government measures. This is therefore an atypical lockout and is not aimed at achieving labour-related objectives (it did not occur in the context of a collective labour dispute).

1182. The Government indicates that, in Uruguay, a lockout cannot be placed on the same footing as the right to strike, and hence the argument put forward in the complaint is flawed. The declaration of the right to strike has constitutional rank (since 1934, current article 57) and a legal basis (Act No. 7514 of 5 October 1922). In Uruguayan law, lockouts have legal rank (Act No. 13720) and, specifically, are not presented as a recognized right, but in the context of a means of preventing collective disputes and respect for the fundamental rights of the community (advance notice and maintenance of minimum emergency services).

1183. The Government states that, in order to delimit the concept of essential services (which is not defined in Act No. 13720), reference should be made to the decisions of the Committee on Freedom of Association as the most accepted doctrine. However, the Government considers that the following three points should be made: (a) this concept is clearly dynamic and ranges from the initial idea of "public hardship" (or calamity) to a more precise definition: services whose interruption could endanger the life, personal safety or health of the whole or part of the population, and also covers the notion of the effect of the duration of a dispute, which initially might not affect essential values, but could have an impact with time. The definition depends on the appreciation of a delicate balance with other fundamental rights. There is no mandatory list. The best example is the latest edition of the *Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of the ILO, which contains some differences in respect of previous editions; (b) the concept of essential services should take into consideration the situation in each country. For example, in a country with alternative means of transportation, the issue of road transport should not be addressed in the same manner as in other countries, such as Uruguay, which do not have adequate rail services; and (c) lastly, the Government indicates that reference is being made to the decisions of the Committee on Freedom of Association concerning strikes in essential services and wonders if these decisions also apply to lockouts. The ITPC's complaint applies them fully. The Government considers this to be incorrect and indicates that, from an international perspective, there is a clear distinction between a strike and a lockout (the Government refers to national and international doctrine in this regard).

1184. With regard to national law, the Government states that strikes and lockouts cannot in any way be considered as having the same legal status. The recognition of the right to strike has constitutional rank, whereas lockouts are referred to in Act No. 13720 of December 1968 in the context of preventing disputes and ensuring essential services (article 65 of the Constitution). In summary, from a labour standpoint, lockouts are not used to oppose government measures. In other words, this case may involve other means of protest (against government measures), but it is not a labour dispute (governed by international labour Conventions and the decisions of the Committee on Freedom of Association). In conclusion, it is not admissible to transfer or apply to this case the same criteria on essential services established by the ILO concerning strikes. In Uruguayan law, the right to strike is legally recognized and given special protection, which cannot be likened to the references in legislation to lockouts. Therefore, a restrictive approach should be taken to limitations on the right to strike (according to article 57 of the Constitution, regulations shall be made governing its exercise and effect). However, this cannot be applied to lockouts, for obvious conceptual reasons and considerations of legal interpretation. The case under examination refers to a lockout and not a strike. Furthermore, the action was not taken during a collective labour dispute (which rules out the application of the criteria established by the Committee on Freedom of Association).

1185. Lastly, the Government indicates that the opposed resolution of 25 October 2006 does not declare all road transport services to be essential, but only those linked to essential services which, in a country without alternative means of transportation, could affect the life or health of the population. The declaration of essential services did not last for more than 24 hours and the industrial action was cancelled by the ITPC itself.

C. The Committee's conclusions

1186. *The Committee observes that, in this case, the ITPC objects to a resolution issued by the Ministry of Labour and Social Security on 25 October 2006 which declared certain road transport activities to be essential services, and indicates that the resolution is not in conformity with the Committee's definition of an essential service and violates Convention No. 87. The ITPC alleges further that, after the resolution had been issued, the police intervened to break up peaceful demonstrations by hauliers.*

1187. *The Committee observes that the opposed resolution declared that the following road transport activities governed by the Ministry of Transport and Public Works were essential services: distribution of fuel; transport and distribution of foodstuffs and products required for their production; transport and distribution of perishable goods; activities guaranteeing normal operations at commercial ports and airports; transport of medical supplies and waste; and any other transport that the Ministry of Labour and Social Security considered to involve the consequences referred to in the sixth preambular paragraph to the resolution (a service whose interruption could be seriously detrimental to the public or increase the risk of collective hardship for the whole or part of the population).*

1188. *The Committee notes that the Government states that: (1) it is necessary at the outset to establish the legal nature of the industrial action at the heart of the dispute, which in this case consisted of suspension of the services provided by the employer in protest against government measures; (2) this is an atypical lockout which did not occur in the context of a collective labour dispute; (3) to delimit the concept of essential services, the resolution refers to the decisions of the Committee as the most accepted doctrine but it should be noted that: (i) the concept is clearly dynamic and its definition depends on the appreciation of a delicate balance with other fundamental rights (there is no mandatory list); (ii) the concept of essential services should take into consideration the situation in each country, given that, in a country with alternative means of transportation, the issue of*

road transport should not be addressed in the same manner as in other countries, such as Uruguay, which do not have adequate rail services; and (iv) the complaint refers to the Committee's decisions concerning strikes in essential services, whereas the clear distinction between a strike and a lockout must be taken into account.

1189. *The Committee observes that the resolution in question was in force for 30 days and that the seventh preambular paragraph stipulated that: "the operations that must be ensured constitute a minimum service; this is a special and provisional regulation in response to an unusual and temporary situation".*

1190. *Although the Committee agrees with the Government that there is a distinction between a strike and a lockout, it observes that this case refers to a "peaceful demonstration" and a "suspension of services", which do not come within the scope of employer–worker relations, but rather that of a protest and suspension of activities by the employer. Under these circumstances, the Committee concludes that employers, like workers, should be able to have recourse to protest strikes (or action) against a government's economic and social policies [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 529], which should be able to be restricted only in the case of essential services or public services of fundamental importance, in which a minimum service could be established.*

1191. *Therefore, the Committees has considered that, among other things, transport generally, loading and unloading docks, the production, transport and distribution of fuel, metropolitan transport and the supply and distribution of foodstuffs do not constitute essential services in the strict sense of the term [see* ***Digest****, op. cit., para. 587]. The Committee considers, however, that in the event of the suspension of a service which is not essential in the strict sense of the term, in a sector of fundamental importance for a country – as might be the case for passenger and goods transportation – the requirement to maintain a minimum service may be justified. However, the employers' and workers' organizations concerned must be able to participate in the process of determining which minimum services should be guaranteed, and in the event of disagreement as to the services to be maintained, the law should provide for such disagreement to be settled by an independent body and not by the administrative authority.*

1192. *Under these circumstances, and in view of the fact that the resolution establishing the minimum services does not indicate that the parties concerned were involved in their determination, the Committee requests the Government, in future situations in which the suspension of a non-essential service might justify requiring a minimum operational service, to enable the participation of the relevant employers' and workers' organizations in the process and not to resort to the unilateral imposition of a minimum service. In the event of disagreement as to the minimum service to be maintained during the suspension of activities, the Committee requests the Government to ensure that any such disagreement is settled by an independent body.*

1193. *With regard to the alleged police intervention to break up peaceful demonstrations by hauliers, the Committee regrets the fact that the Government has not sent its observations in this respect. The Committee observes that, since the complainant did not provide further details, it will simply remind the Government of the following principle: "The authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and 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 when controlling demonstrations which might result in a disturbance of the peace." [see* ***Digest****, op. cit., para. 140].*

The Committee's recommendation

1194. ***In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

> ***The Committee requests the Government, in future situations in which the suspension of a non-essential service might justify requiring a minimum operational service, to enable the participation of the relevant employers' and workers' organizations in the process and not to resort to the unilateral imposition of a minimum service. In the event of disagreement as to the minimum service to be maintained during the suspension of activities, the Committee requests the Government to ensure that any such disagreement is settled by an independent body.***

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 of Commerce and Manufacturers' Associations (FEDECAMARAS)

Allegations: The marginalization and exclusion of employers' associations from the decision-making process, thereby excluding them from social dialogue, tripartism and consultations in general (particularly in relation to the very important legislation that directly affects employers) and failing to comply with the recommendations of the Committee on Freedom of Association; the arrest and charging of Carlos Fernández in retaliation for his activities as President of FEDECAMARAS; restrictions on the freedom of movement of the former President of FEDECAMARAS, acts of discrimination and intimidation against employers' leaders and their organizations; legislation at odds with civil liberties and the rights of employers' organizations and their members; violent assault on the FEDECAMARAS headquarters by pro-government mobs which caused damage and threatened employers; acts of favouritism by the authorities in regard to non-independent employers' organizations

1195. The Committee last examined this case at its June 2006 meeting, when it submitted an interim report to the Governing Body [see 342nd Report, paras 995–1019, approved by the Governing Body at it 296th Session (June 2006)].

1196. The Government subsequently sent further observations in communications dated 7 February, 3 May and 14 September 2007. The International Organisation of Employers (IOE) sent new allegations in communications dated 31 March, 25 May and 11 October 2007.

1197. 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

1198. When it examined the case in May–June 2006, the Committee on Freedom of Association (CFA) made the following recommendations on outstanding issues [see 342nd Report, para. 1019, approved by the Governing Body at its 296th Session (June 2006)]:

(a) The Committee calls on the Government to continue keeping it informed of the bipartite and tripartite consultations that are held with FEDECAMARAS and of any negotiation or agreement with that federation or its regional bodies, and to send it the relevant texts. The Committee observes that the Government has not responded to its offer of ILO technical assistance in establishing a system of labour relations, based on the principles of the ILO Constitution and of its fundamental Conventions, so that social dialogue can be consolidated and placed on a permanent footing. The Committee calls on the Government to accept this offer and to keep it informed in this regard and, as a first step, to reconvene the National Tripartite Commission as provided for in the Labour Code.

(b) The Committee requests the complainant organizations to provide further information on the development of social dialogue.

(c) The Committee considers once again that the detention to which Carlos Fernández, president of FEDECAMARAS, had been subjected, as well as being discriminatory, was intended to neutralize, or act as retaliation against, this employers' official for his activities in defence of employers' interests; therefore, it urges the Government to take all possible steps to annul immediately the judicial proceedings against Carlos Fernández and his warrant for arrest and to ensure that he can return to Venezuela without delay and without risk of reprisals; the Committee requests the Government to keep it informed of developments in this regard.

(d) The Committee requests the Government to send its observations on the new allegations of the IOE dated 19 May 2006.

1199. The content of the IOE's allegations dated 19 May 2006, which was not examined at the May–June 2006 session, is reproduced below.

1200. The IOE alleges that despite the numerous promises of dialogue and the detailed information provided by the Government to the Office in its communications or during ILO missions, the IOE notes with regret that despite the great interest shown by FEDECAMARAS in strengthening its relations and collaboration with the Government, there is no authentic dialogue, the situation is not improving and the harassment measures against the private sector as represented by FEDECAMARAS are continuing to occur, in particular:

– the maintenance of interventionist unilateral and non-consultative policies within the market and in the setting of prices that are damaging above all to the private companies close to FEDECAMARAS. These policies have had highly antisocial

effects as seen in the numerous companies that have gone out of business or are in difficulties, giving rise to high levels of unemployment within the country;

– exchange controls and restricted access to the currency market for companies close to FEDECAMARAS, at a time when the Bolivarian Republic of Venezuela has a considerable foreign capital surplus. The granting of credits or access to raw materials in foreign currency is carried out in a partial and discriminatory manner. It is to be noted that the Government is still failing to comply with the recommendations already made by the CFA in this particular regard;

– elaboration of the Labour Solvency Act as a means of controlling and harassing the independent private sector in the absence of any genuine consultation with the social partners and as an instrument which could be used by the Government to favour companies inclined towards the regime and discriminate against those that are close to FEDECAMARAS; and

– confiscation and illegal occupation of lands and destruction and burning of crops, with the Government frequently disregarding decisions by the judicial authority regarding the restoration of lands to their owners.

1201. The IOE also alleges that the Government is continuing to favour and grant privileges to employers' institutions to the detriment of free and independent employers' organizations, in violation of Article 3(2) of Convention No. 87, where it is specifically provided that "The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof." At the same time, the creation of social production enterprises with privileges granted by the State or by state-owned companies has destabilized numerous corporate sectors.

1202. The IOE emphasizes, moreover, that the acts of harassment against the former presidents of FEDECAMARAS continue to be a matter of great concern despite the recommendations made by the CFA and the Standards Committee of the International Labour Conference:

– Mr Carlos Fernández is still living in exile outside the country and is unable to return to the Bolivarian Republic of Venezuela with any guarantees. The Committee should once again call on the Government to accept without restrictions the recommendation made by the ILO's supervisory bodies and allow Mr Fernández to live freely within his country. Until such time as Mr Fernández is able to return freely to Venezuela, the Venezuelan Government will be violating the freedom of association of employers.

– As regards the former president of FEDECAMARAS, Ms Albis Muñoz, during the 2005 International Labour Conference the representative of the Government of the Bolivarian Republic of Venezuela stated, as is shown in the records, that Ms Muñoz had been able to leave the country whenever she needed to do so. The IOE wishes to report to the Committee the harassment of Ms Muñoz and her absence of liberty. First, on the occasion of the ILO Regional Seminar on employer organizations and ILO supervisory mechanisms (Panama, 2 and 3 February 2006), the Government of Venezuela prevented Ms Muñoz from leaving the country to attend the gathering. Ms Muñoz was also prevented from participating in ILO's American Regional Meeting, held in Brasilia from 2 to 5 May, despite the fact that the recognized judicial authority had previously given its consent in writing. The migration authorities refused to accept the authorization despite numerous telephone calls made from the airport during the six hours preceding the flight departure time. Other acts of harassment against Ms Muñoz include the blocking of her credit card by the Ministry of Finance (CADIVI). The bank has reported that it was this ministerial service (CADIVI) which restricted access to her guarantee and bank funds.

B. The Government's reply

1203. In its communication of 7 February 2007, the Government states that in its present observations it replies to the information requested, recalling that the Government – subsequent to the IOE's new allegations of 19 May 2006 – has appeared before different supervisory bodies, including the Governing Body, in relation to this case, as well as before the Standards Committee at the 95th Session of the Conference, where it duly provided abundant information regarding those allegations.

Social dialogue

1204. As regards the IOE's statement that authentic social dialogue does not exist in the Bolivarian Republic of Venezuela, the Government points out that social dialogue according to ILO doctrine is understood to mean all types of negotiation, consultation or simply exchange of information between representatives of governments, employers and workers on issues of common interest relating to economic and social policy. This mechanism, thus defined by the ILO, has been widely and intensively used with the employer sector, even during very difficult periods of social polarization stirred up by elements which refuse to respect, promote or comply with the observance of human rights. Adequate information has been provided in regard to the fact that, since 1999, forums for dialogue have been set up by branch of national economic activity and all forms of consultations and political negotiations have been conducted in response to the social polarization that occurred between late 2001 and early 2003, all of which led to the holding of the referendum of 15 August 2004 which reconfirmed Hugo Chávez Frías, Constitutional President of the Bolivarian Republic of Venezuela, as Head of State, re-elected once again by the Venezuelan people, in a democratic and transparent manner on 3 December 2006, to serve as Constitutional President of the Bolivarian Republic of Venezuela for the period 2007–13.

1205. It is important to note that the dialogue has since been further diversified and broadened, particularly in 2005 and 2006. During this period, the Government, at the national, regional and local levels, and FEDECAMARAS have held countless meetings – as we have reported to the ILO's various supervisory bodies, including the Governing Body's CFA – attended by the President of the Republic and Vice-President of the Republic, ministers and senior officials and dealing with a range of issues. In the same period, over 50 meetings have been held with all of the social partners, without prejudice to other consultations conducted in writing or by means of surveys.

1206. The Government has always acknowledged and will continue to acknowledge the role of FEDECAMARAS and the other employers' organizations, without exclusions or favouritism as occurred in the recent past when employers' organizations going back a long way in terms of their foundation, and highly representative of certain sectors of our social and economic life, did not participate. It is to be noted that only last week, i.e. Friday, 25 and 29 of the current month of January, the Ministry for Labour and Social Security, through the Department of International Relations and Liaison with the ILO, called FEDECAMARAS to a meeting that included all of the organizations representing employers, to facilitate an exchange of opinions and consultation between them. With this, the Government is complying with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and is promoting the consultation process, with the aim of enabling the formation – in good time – of the Employers' delegation that will be attending the 96th Session of the International Labour Conference to be held, as is customary, in June 2007 in Geneva.

1207. This social dialogue, which includes meetings of the regional and sectoral chambers with national, regional and local authorities, is linked to a sovereign and popular government

policy, which together have constituted key factors for economic growth over the past ten quarters through lower inflation, lower interest rates, the reduction of certain taxes (for example, on bank overdrafts), lower unemployment with the reuse of almost the entire installed industrial capacity and growth of formal employment, thanks to ongoing investment in health, education and vocational training, as well as in the transport infrastructure (highways, subway systems, railways, bridges, dams) and in social (including dwellings, hospitals, schools, colleges and labour inspectorates) and industrial infrastructure.

1208. However, in the Bolivarian Republic of Venezuela one also finds the conditions that enable such social dialogue: solid and independent employers' and workers' organizations with access to information and social dialogue; the political will and commitment on the part of all social partners to engage in social dialogue in good faith; a clear and constant respect for labour rights, particularly freedom of association and voluntary collective bargaining – institutions which are increasingly growing in strength with institutional support; and, finally, mutual respect and recognition among all of the social partners, who are now convinced, being the majority of the social players, of the need to broaden social dialogue and make it all-inclusive.

1209. As regards the expansion and plurality of the players, it is worth drawing attention at this point to the opinion recently expressed by the IOE itself through the words of its president, Mr François Perigot, at the seventh European Regional Meeting (Budapest, 14–18 February 2005), when he stated that he saw social dialogue as an opportunity rather than a threat: but it needed to be defined and agreed if it was to provide a means of addressing the problems of globalization. The mode of social dialogue must now take account of new stakeholders and actors, non-governmental organizations: this should be associated in an appropriate way in cooperation with responsible representative organizations. Social dialogue too must now be globalized, in order to tackle issues at that level that would otherwise escape control. For this, a more informed picture of the situation was required.

1210. In the light of the foregoing, the Bolivarian Government rejects the IOE's assertion in paragraph 1(a) of the complaint in regard to "unilateral policies and interventionist non-consultation in the market as well as the setting of prices which have a harmful effect mainly on private companies close to FEDECAMARAS" on account of its inconsistency, weakness, hastiness and lack of credibility, and among other things on account of the failure to substantiate or document in any way whatsoever those assertions – for example, the nature of the "private companies close to FEDECAMARAS" – not to mention the fact that the assertions made and quoted above in no way reflect any element that runs counter to the provisions of Conventions Nos 87 and 98 on freedom of association and collective bargaining.

1211. The IOE recklessly states that "these policies have proved to be highly antisocial given the numerous companies that have gone out of business or are in crisis, resulting in a high level of unemployment in the country". Were this the case, how is it that unemployment, which reached an all-time peak of 22.7 per cent, or 2.4 million unemployed, in February 2003 – the outcome of the political actions and coup d'état fostered by executives within FEDECAMARAS, affiliated to the IOE – had four years later, by late 2006, fallen to a level of 8.4 per cent, or some 1 million unemployed? And how, moreover, do the IOE and FEDECAMARAS explain that the informal economy is in steady decline, having fallen from 52.7 per cent in 2003 to 44.5 per cent by the end of 2006? Indeed, if things had been as the IOE claims, why is it that the Venezuelan people endorsed the social and economic policy of the Government of President Hugo Chávez with 7,300,000 votes on 3 December 2006, thereby enabling him to undertake a fresh six-year term of office as President of the Bolivarian Republic of Venezuela?

1212. The Government points out that the tables it attaches illustrate quite clearly that the views of FEDECAMARAS are out of touch with reality, and states once again that the highest percentages for the informal economy and unemployment were the result of destabilizing and antidemocratic activities on the part of FEDECAMARAS.

1213. Once again we call upon the IOE to substantiate what it has claimed before the CFA by communicating to it the number of companies closed for whatever reason, the numbers of workers, both men and women, who have lost their jobs, and the nature of the serious and trustworthy statistical studies whose results they must surely have in their possession in order to be able to express judgements and assertions of the kind contained in the new observations sent to the Committee. This should enable the IOE and FEDECAMARAS to establish their credibility in the face of what has thus far been a despicable manipulation and lack of seriousness in terms of the arguments laid before the ILO's supervisory bodies, which amount to no more than alleged situations without any supporting evidence whatsoever.

Economic and monetary policy and foreign-exchange market

1214. The IOE's claims continue to be vague and its arguments unsubstantiated. In the face of this persistence, the Government points out, as it has already adequately pointed out to the CFA on other occasions, that the arguments put forward by the IOE are levelled at exchange-related aspects, the foreign currency control and administration system and monetary considerations. These matters, in regard to which its allegations are, moreover, purely generic (in the absence of any specific, documented and convincing evidence), have nothing whatsoever to do with the provisions laid down in any of the articles of Conventions Nos 87 and 98 on freedom of association and collective bargaining. It is for this reason that they are not to be found among the subjects covered by the terms of reference of the CFA for examination, conclusion or recommendation, these being matters which fall within the policy-making and procedural competence of the Venezuelan State, which, as a sovereign State, conducts its monetary, economic and exchange policy in the interests of the common good, it being the common good which, let it be remembered, constitutes one of the main values on which the ILO is founded.

Labour solvency

1215. In response to the IOE's allegations, the Government points out that labour solvency has been in existence ever since our labour legislation began, 80 years ago, to function in an orderly and systematic manner, and since the first social security act came into being in the 1940s, making it obligatory for employers and workers alike to make their contribution to the social security fund – something which the vast majority of unscrupulous employers had been failing to do.

1216. With a view to putting an end to the culture of non-compliance with the act that had arisen as a result of ineffectiveness and decadence in the labour inspectorate function, a new labour solvency certificate has recently entered into force, which prohibits the State from concluding contracts, allocating foreign currency, issuing import or export licences or offering preferential loans from public institutions to any employers which do not comply with labour, union and social security rights. This measure was adopted after several months of social dialogue and its entry into force was postponed at the request of the FEDECAMARAS employers (the correspondence in that regard, up to 1 May 2006, is attached). This is an expeditious procedure that in no way undermines corporate management. On the contrary, it has enhanced the functioning of the Venezuelan State and

the collection of social security contributions in the interests of better service provision and respect for human rights.

1217. Labour solvency has led to greater compliance with reinstatement orders issued by the labour administration, and a significant increase in the collection of social security contributions, resulting in constant improvements to the system. One social security institution alone increased its intake by 32.5 per cent, with an additional amount of US$30.6 million in just one month for the benefit of workers. In the past, the figures revealed a hugely disproportionate debt on the part of employers, resulting in inefficiencies in the social security system. Far from constituting a form of control or "harassment" of employers, labour solvency provides an incentive to make corporate social responsibility a reality, an essential condition for the existence of the common good, one of the fundamental values of the ILO.

1218. As regards the second part of the IOE's allegations, what we find here is inconceivable. One is constantly startled by the exclusive and discriminatory approach that is taken by the FEDECAMARAS and IOE employers, with their restrictive – and, worse still, exclusive – vision of the right of association. It is a well-known fact that the social production companies form part of the policy being pursued in the interests of overcoming poverty, democratizing property and wealth and creating a social mechanism for empowering the population so as to do away with poverty and marginalization. Recognition of the country's employers' organizations comes under the heading of respect for Article 3(2) of Convention No. 87. The State is unable to limit this right; we are talking here about legitimately constituted organizations, as is the case of FEDECAMARAS, which are thus taken into account without any kind of favouritism, contrary to the manner in which FEDECAMARAS is seeking to be treated, i.e. on an exclusive and favoured basis.

On the alleged denial of freedom to the leaders of FEDECAMARAS, Mr Carlos Fernández and Ms Albis Muñoz

1219. The Government once again informs the CFA that Mr Carlos Fernández is still living outside the country. Indeed, it was Mr Carlos Fernández himself who decided to leave the country following his release by a court of appeal subsequent to his being charged by the Office of the Public Prosecutor (Sixth Prosecuting Attorney) with crimes of sabotage, conspiracy and treason during the oil strike of December 2002 and February 2003. That charge and bringing to trial was not initiated by the Executive but by an independent and autonomous authority, namely Citizen Power, through the Office of the Public Prosecutor, in view of the fact that the acts committed by Mr Carlos Fernández, in his capacity as President of FEDECAMARAS, caused immeasurable damage both to the population, with the violation of basic human rights, and to the oil industry, with a huge increase in unemployment, inflation, the flight of foreign currency and a major economic slowdown.

1220. The detention of Mr Fernández was always the consequence of proceedings of, and rulings made by, independent and autonomous public authorities, in the absence of any persecution or restrictions on the exercise of his union rights and freedoms. He did not suffer any ill-treatment during his detention (the Government furnished documentary proof in the form of statements made to the mass media by Mr Fernández and his wife to the effect that he had been well treated), nor did he complain to the competent authorities of any such events or of having been subjected to harassment by the authorities. In the face of such a contradiction, involving accounts of ill-treatment or harassment in the absence of any complaint thereof, the CFA decided not to pursue its examination of this aspect of the case.

1221. It has to be said, moreover, that the provisions of Conventions Nos 87 and 98 neither authorize nor legitimize actions taken against the legal order, but rather require the representatives of the social partners or labour actors to respect the basic rules of civic coexistence and democratic coexistence. In its Article 8.1, Convention No. 87 states: "In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land".

1222. The Venezuelan Government and the public at large were victims of the irresponsible behaviour on the part of Mr Carlos Fernández and his FEDECAMARAS associates at that time. This gentleman overstepped the mark during the oil strike and committed the abovementioned crimes (far removed from the exercise of trade union activity) with which he is charged by the Office of the Public Prosecutor and which have been brought before the seat of the judiciary, leading him to flee the country without facing justice, despite having obtained favourable rulings, with several of the charges originally formulated having been dismissed by the judges dealing with the case and with the Criminal Division of the Supreme Court of Justice having cancelled the ruling pronounced by the Court of Appeal. In the meantime, the Constitutional Division of the Supreme Court of Justice handed down a decision ordering his definitive arrest, by which time Mr Fernández was outside the country, being now a fugitive from justice.

1223. As regards the IOE's allegation regarding the hounding and harassment of Ms Albis Muñoz, former President of FEDECAMARAS, the Government reiterates that it has at all times done everything within its power to permit the timely participation of representatives of all of the trade union organizations in ILO events. The Government reiterates that in the Bolivarian Republic of Venezuela there is a clear division of powers.

1224. The Government regrets that the instructions which should have been issued sufficiently in advance by the judiciary on the occasion of the 16th American Regional Meeting (Brasilia, 2–5 May 2006) were not received in time by the corresponding authorities (migration) and that the alleged absence occurred. At the same time, however, it reminds the Committee that Ms Muñoz did promptly attend the 95th Session of the Conference in June 2006 in Geneva. Indeed, the Government is keen and interested to see the participation of all the social actors in both the regional and international events, and therefore categorically rejects the arguments put forward by the IOE alleging harassment on the part of the Government to prevent Ms Muñoz from attending the said ILO event.

1225. This was the message communicated to the Employers' group at the American Regional Meeting held in Brasilia in May 2006 and during the meetings of the 297th Session of the ILO Governing Body in November 2006, where in addition to expressing regret over the occurrence it invited the group to reflect on the urgent need for introducing flexibility into the international regulations regarding the participation of trade union organizations in regional and international events, given that highly important topics presented for the benefit of small and medium-sized enterprises (SMEs) – which together constitute one of the main sectors generating employment and inclusion – by ILO experts devoting their valuable time to sharing experiences and results with a view to their application by the SME partners, remain a dead letter when FEDECAMARAS assumes for itself the exclusive representation of employers, shutting out players with a genuine mission and experience of the SME sector.

1226. Finally, the IOE states in its complaint of 19 May 2006 that "it will shortly be making available more detailed information in regard to the above". In this regard, the Government of the Bolivarian Republic of Venezuela points out that, at the time of putting these observations to paper and after eight months of waiting for the IOE's substantiated comments, there is still no sign of the "more detailed information in regard to the above" –

a fact which demonstrates a lack of any arguments of sufficient weight to enable the CFA to continue processing complaints that are unsubstantiated and have neither the necessary content nor quality for determining whether or not the Venezuelan State is failing to comply with the Convention referred to in the information submitted by the IOE.

C. New allegations by the IOE

1227. In its communication dated 31 March 2007, the IOE explains that it is presenting new allegations, having regard to the existence of new facts in the same case and to the steady deterioration in the ability of FEDECAMARAS to fulfil its purpose.

Government intervention aimed at restricting the right of freedom of association

Confederation of Socialist Employers

1228. The IOE regrets to note that the Government of the Bolivarian Republic of Venezuela, despite the numerous conclusions and recommendations of the International Labour Conference, the technical assistance provided by two direct contact missions and the visit of a high-level technical assistance mission from the Office in January 2006, is continuing to favour and grant privileges to employers' institutions to the detriment of the most representative, free and independent employers' organizations.

1229. In this regard, and as will be seen from the attached annex, on 2 February 2007 various organizations associated with the authorities, and with the support of the Venezuelan Government, signed the so-called Statute of the Confederation of United Socialist Employers of Venezuela (CESU). The CESU has been established and sponsored by the Government of the Bolivarian Republic of Venezuela to replace FEDECAMARAS as the employers' forum for consultation. By way of an initial illustration of the Government's interference in the new confederation, suffice it to say that on 23 January 2007 the Employers for Venezuela (EMPREVEN) institution, which heads the new confederation, named the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías, as honorary President of the institution in recognition of the support provided thereto.

1230. Similarly, in a press release published on 8 February 2007, EMPREVEN President Alejandro Uzcátegui explained that the new confederation "will be made up of seven employers' associations which support the political proposals of the Bolivarian Government", indicating further that "the Confederation adheres to the intention of the President of the Republic, Hugo Chávez Frías, to consolidate twenty-first century socialism". All of which demonstrates a high level of favouritism, interference in the autonomy and a lack of impartiality on the part of the Government vis-à-vis EMPREVEN with a view to weakening FEDECAMARAS as the most representative employers' organization and its recognition as such.

Attack on freedom of expression

1231. The IOE is concerned at the serious threats to freedom of expression in the Bolivarian Republic of Venezuela, which obstruct the proper exercise of the right of freedom of association.

1232. On 28 December 2006, while attending a military ceremony, the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías, announced that he was withdrawing the licence of Canal 2, Radio Caracas Televisión (RCTV), the country's oldest television station, maintaining that "there will be no new licence for that coup-

mongering television channel formerly known as RCTV. Its licence has come to an end; … there will be no tolerance for any communication medium that is in the service of coups, against the people, against the nation, against national independence, against the dignity of the Republic; Venezuela has its self-respect". Having been on the air since 1953, RCTV has been unable to transmit a signal since 27 May of this year. It is worth pointing out here that pursuant to article 210 of the Basic Act on Telecommunications, and in accordance with article 3 of Decree No. 1577, published in *Gaceta Oficial* No. 33726 of 27 May 1987, RCTV has the right to have its licence extended for a further 20 years until at least the year 2022. This right of extension is protected and guaranteed by article 210 of the Basic Act on Telecommunications. According to the opinion publicly expressed by the Government, any television and radio licences granted prior to 1987 (which includes all AM radio stations), expire on 27 May 2007. As from that date, the existence of all those stations remain, subject to the Government's arbitrary decision-making. Were the Government right in this approach, this would merely have the effect of making the 20-year extension applicable as from that date, resulting in an expiry date for RCTV's licence of 27 May 2027.

1233. It is worth pointing out in this connection that currently only two national television channels, RCTV and Globovisión, are private and independent from the Government, while two others, in the face of constant threats from the Government, have changed their editorial line and eliminated their discussion programming, and the others are in the hands of the Government. The case of RCTV is all the more serious since it is this television channel which enables Venezuelan employers to express themselves freely through FEDECAMARAS, making its existence essential to the defence of private sector interests.

1234. With a view to preparing concerted action against RCTV, a decision was published in *Gaceta Oficial* No. 38622 of Thursday 8 February 2007 aimed at denouncing the destabilization plan activated by the opposition and a number of private communication outlets in response to the latest proclamations made by the President of the Republic.

1235. The threat to revoke the licence of a television station, as is the case of RCTV, a member of the Venezuelan Chamber of Television, which itself is affiliated to FEDECAMARAS, constitutes a direct attack on freedom of expression and a threat to the exercise of trade union rights and the right of association. RCTV is an essential medium for the unrestricted exercise of freedom of association in Venezuela.

Absence of bipartite and tripartite consultation and social dialogue

1236. The IOE regrets to note that, despite the great interest shown by FEDECAMARAS in recent months to strengthen its relations and collaboration with the Government, genuine social dialogue and tripartite consultation, as recognized in Convention No. 144, ratified by the Bolivarian Republic of Venezuela in 1983, and Recommendation No. 152, do not exist. In certain cases, the Government confines itself to conducting formal consultations without any intention of taking any account of the views expressed by the independent social players consulted. Thus it is in this way that issues of the utmost importance, such as setting of the minimum wage, are decided on by the Government on a unilateral basis.

1237. In that regard, the IOE wishes to refer to the address that was made by the Chairperson of the Employers' group of the ILO Governing Body in November 2005, in which he spoke of the readiness on the part of FEDECAMARAS to make every effort to strengthen dialogue and trust with the Government and requested that the meeting of the Governing Body not consider the dispatch of a direct contacts mission, despite the positive recommendation made in that regard by the CFA. The IOE deeply regrets that the Government has ignored the efforts made by FEDECAMARAS and its vote of confidence in favour of re-establishing dialogue.

1238. As the CFA emphasized in its 334th Report, paragraph 1065, in relation to the present case involving the Bolivarian Republic of Venezuela, "tripartite consultations should aim, in particular, at joint consideration of matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions, including in regard to the preparation and implementation of laws and regulations affecting the interests of workers' and employers' organizations".

1239. Attention is thus drawn to the following cases in order to demonstrate the absence of social dialogue and tripartite consultation on the part of the Government of the Bolivarian Republic of Venezuela, namely: Enabling Act, setting of minimum wage and decree on labour solvency.

Legal reforms and adoption of new regulations in the absence of consultations with the employers' representative organizations: Enabling Act, setting of minimum wage and decree on labour solvency

1240. The year 2006 saw the adoption of numerous legal initiatives which have had a negative impact on the Venezuelan private sector, with the consequent loss of many companies and jobs, all of this at the discretion of an interventionist State.

1241. In this regard, the promulgation of new laws and introduction of legal reforms were not preceded by due consultation with the organization most representative of the employers' sector, namely FEDECAMARAS, despite the fact that the report of the high-level technical assistance mission to the Bolivarian Republic of Venezuela which took place from 23 to 29 January 2006 listed one of the mission's objectives as being to explore the opportunities for strengthening social dialogue – a dialogue that should not be limited to the convening and holding of meetings but should include, to the extent possible, the conclusion of agreements.

1242. And this is indeed the case, provided that consultation is both timely and effective, and social dialogue inclusive and influential, it being up to the State to furnish the means for ensuring that this is so.

Enabling Act

1243. On 1 February 2007, a law came into effect authorizing the President of the Republic to issue decrees with the rank, value and force of law in matters delegated to him, namely in the areas of: (1) the transformation of state institutions; (2) public participation; (3) essential values pertaining to the work of the civil service; (4) economic and social matters; (5) financial and tax-related matters; (6) law and order; (7) science and technology; (8) town and country planning; (9) security and defence; (10) infrastructure, transport and services; and (11) energy.

1244. This Enabling Act, published in *Gaceta Oficial* No. 38617, authorizes the President of the Republic to legislate without consultation or social dialogue for a specific period of 18 months (from 1 February 2007 to 1 August 2008) by means of decrees having the rank, value and force of law in the aforementioned areas. In this way, laws will be enacted without prior discussion of a corresponding bill and without the public consultation provided for articles 206 and 211 of the national Constitution:

> Constitution of the Bolivarian Republic of Venezuela, Article 206: The States must be consulted by the National Assembly, through the State Legislative Council, when legislation in matters relating to them is being considered. The mechanisms for consultation of citizens and other institutions by the Council with respect to such matters shall be established by law.

Constitution of the Bolivarian Republic of Venezuela, Article 211: During the process of debating and approval of bills, the National Assembly or Standing Committees shall consult the other organs of the State, the citizenry and organized society to hear their opinion about the same. The following shall have the right to speak during debates on proposed laws: the Cabinet Ministers, as representatives of the Executive Power; such justice of the Supreme Tribunal of Justice as the latter may designate, to represent the Judicial Power; such representative of Citizen Power as may be designated by the Republican Ethic Council; the members of the Electoral Authority; the States, through a representative designated by the State Legislative Council; and the representatives of organized society, on such terms as may be established by the Regulations of the National Assembly.

1245. The Enabling Act threatens the separation of powers and participatory democracy as enshrined in the current Constitution of 1999 by delegating the legislative function to the Executive and totally eliminating the law-making procedure that the Constitution and constitutional State must have in order for there to be a Republic. It also threatens the principle of freedom of association since it deprives the social partners of exercising their right to participate in the consultations and development of legislation that concerns them. It can, moreover, be said that the constitutional State does not exist in the Bolivarian Republic of Venezuela inasmuch as the opposition has no influence in the National Assembly. Finally, it is to be noted that for years now the judicial system has for the most part lacked independence since it is controlled by individuals allied to the Government who follow its recommendations.

Minimum wage

1246. Pursuant to Convention No. 26, ratified by the Bolivarian Republic of Venezuela in 1944, to article 91 of the national Constitution and to articles 167 to 173 of the Organic Labour Act, the procedure for setting the minimum wage must be the result of tripartite consultations between Government, employers and workers. Unfortunately, since 2000, and despite repeated recommendations made by the Committee in that regard, the present Government has neither convened, nor appears to have any intention of convening, the Tripartite National Commission, an entity provided for in the Organic Labour Act (articles 167 and 168) whose function, in addition to formulating recommendations in regard to minimum wages, is to express the interests of institutions or pressure groups it represents in the political sphere and in regard to the establishment of conditions of labour.

Organic Labour Act

Article 167: A National Tripartite Commission shall review minimum wages at least once a year and with reference to, among other variables, the cost of the food basket. The Commission shall have a period of thirty (30) days as from the date of its convening during the month of January each year to adopt a recommendation. It shall be the duty of the National Executive, on the basis of that recommendation and without prejudice to the duties entrusted to it under Article 172 of this Act, to set the amount of the minimum wages.

Article 168: The National Tripartite Commission to which the previous article refers shall be made up of equal numbers of representatives from: (a) the most representative trade union of workers; (b) the most representative employers' organization; (c) the National Executive. The Regulations pertaining to this Act shall specify the manner in which its members are to be designated. SINGLE PARAGRAPH – The Commission shall adopt its rules of procedure, which shall cover, as a minimum: (a) arrangements for the convening of meetings; (b) place and date of sessions; (c) agenda; (d) procedure for the adoption of decisions; and (e) any other matters it deems necessary for ensuring the proper discharge of its duties.

1247. The Government confined itself to contacting FEDECAMARAS and requesting its views in regard to the minimum wage only 24 hours before it was established and officially published, as can be seen from the documents contained in an annex to the IOE's communication. There were no consultations between the Government, employers and unions, and indeed no dialogue whatsoever.

Decree on labour solvency

1248. On 3 April 2006, the Government promulgated, without the holding of timely and appropriate consultations with the social partners, the decree on labour solvency.

1249. This decree established labour solvency as an essential prerequisite for, among other things, obtaining foreign currency from the body set up to administer exchange controls (CADIVI) and the conclusion of contracts, agreements and any other type of dealings whatsoever that a company needs to conduct with the State.

1250. When requesting labour solvency certification, employers must complete a list of 73 questions relating, among other things, to their associative status. The fact of being a member of FEDECAMARAS is an obstacle to obtaining labour solvency certification. According to information received by FEDECAMARAS from its associates, the practical application of the decree on labour solvency has been accompanied by additional administrative obstacles to its granting.

1251. In other words, the administrative procedure is both cumbersome and complicated, and the fact that there is a high level of rotation among the staff or officials involved in the processing of applications means that the granting of solvency status is obstructed and delayed. Unfortunately, the labour solvency requirement results in the paralysis and shutdown of companies, thereby making the already bad unemployment situation worse.

1252. It is to be noted that the Act on labour solvency was promulgated by presidential decree, despite the fact that the President is not empowered to take such a measure under the Venezuelan Constitution. The decree should have been an act emanating from the National Assembly, with the latter empowering the President to that end. In this regard, the Venezuelan Confederation of Industrialists (CONINDUSTRIA), acting on behalf of its member organizations and companies, presented before the Constitutional Division of the Supreme Court of Justice, on 30 March 2006, a claim of invalidity on the grounds of the decree's unconstitutional nature on account of, among other things, the fact that it was enacted without regard for the public participation procedures provided for under the law, thereby infringing the rule of law and violating the right to economic freedom, effective judicial protection and the principle of good faith in administrative procedures.

Restrictions on access to international cooperation

1253. On 14 June 2006, the National Assembly approved, on first discussion, the bill for the so-called "Act on international cooperation". This is a bill which threatens to repress, control, silence and prevent the independent activities of the country's civil society. The organizations affected by the adoption of the Act would be those that receive contributions under the heading of international cooperation to enable them to operate, such as NGOs (which operate in the areas of human rights, environmental concerns, health issues, etc.), independent trade unions, employers' organizations, etc.

1254. The provisions set forth in the bill include the creation of the Fund for International Cooperation and Assistance, to be administered by a new executive organ dealing with international cooperation. Through this fund, the Government will receive and administer

resources derived from taxes and profits, as well as those derived from "legacies, donations, transfers and other resources which, under the heading of support for cooperation between countries, are received from other governments, international bodies, voluntary agencies and public and private institutions, whether domestic or foreign". The Executive will be solely competent, without any oversight on the part of other government authorities or society, for defining the nature of the resources to be handled by the fund, and how they will be administered and distributed.

1255. As such, the bill on international cooperation, on which the employers were not consulted, constitutes a clear violation of freedom of association as defined in ILO Convention No. 87 and article 52 of the national Constitution, according to which "Everyone has the right to assemble for lawful purposes, in accordance with law. The State is obligated to facilitate the exercise of this right".

1256. Having regard to the foregoing, the adoption of this "Act on international cooperation", as currently worded, could threaten the existence of specific employers' and workers' organizations.

Harassment of employers' leaders

1257. The IOE regrets to note that the Government is continuing to pursue its hostile policy against the private sector, all the more so since President Hugo Chávez Frías won the presidential elections in December 2006. The official confrontation with the private sector is to be seen in the speeches made by Chávez, in which he scorns and seeks to discredit its leaders, in addition to threatening confiscations on alleged grounds of public benefit.

1258. The weakening of the private sector and its leaders forms part of official government policy, which provides that: "those employers who are ready and willing to adopt the socialist agenda must comply with a series of undertakings in order to have access to state incentives. Those not prepared to do so will be banished from their commercial activities and will be dealt with by the State in accordance with the legislation in force (neither pleasantly nor cordially, and on anything but preferential terms)".

1259. The Government has now introduced a series of measures that have generated a state of uncertainty within the private sector, as follows: (a) violations of private property; (b) persecution of employers' leaders; and (c) arbitrary fiscal management.

Violations of private property

1260. Adopted in 2001, the Land and Rural development Act opened the door to violations of private property, affecting the various associations representing the farming and livestock sector. Several governors favourable to the Government decided to issue decrees giving them control of areas of land claimed by them to be unworked or falling under the heading of latifundista. The initiative was supported by President Hugo Chávez, who launched the Zamora Mission and, on 10 January 2005, signed a decree on reorganization of the ownership and usage of agricultural lands. Thus began a series of proceedings against cattle ranches, farms and companies. While the Government argues that this is not a matter of expropriation but rather of the "recovery" by the State of lands whose alleged owners did not have title deeds, what is certain is that numerous employers' leaders have been the victim of incursions, expropriation without fair compensation and confiscation of their lands. Such is the case of, among others, Mario José Oropeza, President of the Carora Cattle Breeding Association, and Luis Bernardo Meléndez, President of the National Association of Stockbreeders. For example, in July 2006, 13,730.2 hectares of land were invaded and 7,000 hectares of sugar cane plantations destroyed in the State of Yaracuy. In

December 2006, three sugar producers were kidnapped and six producers died after being attacked (see the executive report by FEDECAMARAS, Yaracuy, dated 4 July 2006).

1261. In March 2007, the President of the Republic, Hugo Chávez, relaunched the "war against the latifundio (large estate)", taking control of 330,796 hectares of land in the States of Apure, Aragua, Anzoátegui, Barinas, Guárico and Portuguesa (newspaper cutting attached). Chávez also announced that a further 13 ranches would be taken over in the coming weeks, "thereby bringing to 2.2 million the number of hectares recovered" (newspaper cutting attached).

Persecution of employers' leaders

1262. As a result of having expressed criticism and rejection of the Government's anti-business policy, numerous employers' leaders have for three years been subjected to political, fiscal and legal harassment and have had their freedom of movement curtailed. The following employers are among those who are currently prohibited from leaving the country: Albis Muñoz, former President of FEDECAMARAS; Rocío Guijarro, executive director of CEDICE; Ignacio Salvatierra, director and former President of the Venezuelan Banking Association; Julio Brazón, former President of Consecomercio; Raul de Armas, former director of FEDECAMARAS; Federico Carmona, employer and director of the El Impulso newspaper; Nelson Mezerhane, former director of FEDECAMARAS; Felipe Brillembourg, President of the Venezuelan Sugar Producers Association (UPAVE); and Alberto Quirós Corradi, former President of El Nacional and President of the Santa Lucía reflection group. All of these employers' leaders are without access to the facilities necessary to enable them to perform their duties, including the right to leave the country whenever their activities in the interests of those they represent require that they do so; nor are they able to move around freely without authorization from the authorities.

1263. The IOE wishes to express its particular concern in regard to the legal situation of Carlos Fernández and Albis Muñoz, both former Presidents of FEDECAMARAS. As regards the legal situation of Mr Fernández, who is charged with civil rebellion and incitement to civil disobedience, he was initially subjected to house arrest, this having been revoked by the Supreme Court of Justice, which granted him full liberty. Subsequent to this decision, Mr Fernández left the country and the Office of the Public Prosecutor presented an *amparo* (constitutional claim) calling for the decision of the Supreme Court of Justice to be revoked, this having been granted. Mr Fernández currently has hanging over him the house arrest order for having participated in the strike call of December 2002. As the IOE informed the CFA in its communication of 19 May 2006, Mr Fernández remains outside the country, being unable to return to the Bolivarian Republic of Venezuela with any guarantees of due process.

1264. As regards the legal situation of Ms Muñoz, former President of FEDECAMARAS, the Office of the Attorney-General summoned Ms Muñoz to hearings, in order to decide on extension of the preventative measures prohibiting her from leaving the country, on 19 January, 15 February and 7 March 2007. On each occasion Ms Muñoz turned up at the appointed time, and on each occasion the hearing was postponed. On the most recent occasion, she was informed that the hearing was postponed until 15 March 2007. However, she has recently received a new notification to the effect that the date is now 10 April 2007. On 17 January 2007, those defending Ms Muñoz presented a letter to Control Judge 25 of the Criminal Judicial Circuit of the metropolitan area of Caracas, requesting, in accordance with the provisions of article 244 of the Code of Criminal Procedure, that the extension being requested by the Office of the Public Prosecutor be turned down and that the precautionary measure preventing Ms Muñoz from leaving the country without prior authorization be revoked on the grounds that the maximum period of validity (two years) for a precautionary measure had elapsed.

Misuse of authority in the area of fiscal management

1265. The National Integrated Tax Administration Service (SENIAT) is generating panic among private companies through its punitive and interventionist actions, particularly by threatening exorbitant fines, the untimely closure of companies or the conducting of audits in those companies whose leaders have made statements against the Government's policies. The independent employers' sector sees in SENIAT a state entity that is being used by the Government as an instrument for instilling fear in Venezuelan employers.

1266. The facts reported and the evidence attached to this extension of the complaint have been obtained despite the fact that the Venezuelan private sector, as represented by FEDECAMARAS, is in a state of fear. Many employers' leaders have not expressed their case in public on account of the reprisals that the Government might take against them. The totalitarian plan, referred to as "twenty-first century socialism" by the Chávez Government, based as it is on intimidation, limits the public freedoms that allow for the defence of the individual and collective rights of employers. The ongoing harassment being experienced by Venezuela's business sector is threatening the very existence of independent employers' organizations, especially FEDECAMARAS.

1267. In the light of all of the facts and events reported in this communication, the IOE requests the CFA to state its position in regard to the case, to call upon the Government of the Bolivarian Republic of Venezuela to cease engaging in those practices that violate freedom of association, and to recommend the adoption of all appropriate measures to put an end to the reported violations, such as to ensure compliance with those signed international conventions whose purpose it is to foster social dialogue, tripartite consultation and the unconditional defence of freedom of association.

1268. In its communication dated 25 May 2007, the IOE alleges the following:

> Harassment of FEDECAMARAS by pro-government mobs: On 24 May 2007, with the indulgence of the Venezuelan authorities and passive presence of the metropolitan police, representatives of the Ezequiel Zamora National Campesino Front, the Simón Bolívar National Communal Front, the Alexis Vive Collective and the Coordinadora Simón Bolívar turned up at FEDECAMARAS headquarters in vans from the metropolitan mayor's office and other official entities, as well as by public transport. They then proceeded to engage in acts of violence against FEDECAMARAS and its property (photos attached). The demonstrators covered the walls of the building in paint and scrawled messages attacking the organization and its leaders. They also used tremendous force in attempting to force open the doors and damaged the front of the building. Following half an hour of violence, and with the tacit support of the forces of law and order, they handed in a document renewing the official threat to the effect that "they will take the companies away from you, and if things continue as they are at present they will be obliged to engage in more decisive acts of force in which the language is bound to be not only that of words but rather of people power that has no time for prevarication or treachery".
>
> Creation of parallel employers' institutions fostered by the Government of Venezuela, which is maintaining its interventionist and obstructive attitude in an effort to weaken the independent employers' institutions, such as FEDECAMARAS and its member federations, as reported in previous complaints. The IOE wishes to draw the attention of the Committee on Freedom of Association to two new examples of this interventionism and lack of independence on the part of the organizations fostered by the Government of Venezuela: (1) invitation to the official establishment of the Venezuela Confederation of Socialist Industrialists, in which it is specified that the ceremony will be presided over by the President of the Republic, Commander Hugo Chávez Frías (see attachment); and (2) the headquarters of EMPREVEN, the key entity within the new socialist employers' framework, was for two years located in Avenida Lucerna (Central Park), where numerous State bodies are to be found.

1269. In the light of the foregoing, the IOE denounces a new attack on the freedom of association of employers in Venezuela, while at the same time calling for an immediate halt to the harassment of the private sector and its representative organizations, and for the sanctioning of those guilty of acts of violence against FEDECAMARAS or its representatives.

D. New reply from the Government

1270. By a communication dated 3 May 2007, the Government submits its observations concerning the allegations by FEDECAMARAS dated 31 March 2007.

1271. In regard to the alleged intervention by the Government aimed at limiting the right of freedom of association, the Government draws attention to the Confederation of Socialist Industrialists, and gives its confirmation that there is no interference in the freedom that the various employers' organizations can enjoy in regard to their freedom to associate, so they are hardly in a position to state that there is opportunism, favouritism or interference in regard to any confederation. The Government denies that the Confederation of United Socialist Employers of Venezuela (CESV) was set up under its patronage, and there are even fewer grounds for them to state that the intention is to switch consultations from any one to any other employers' grouping, since this Government is neither in the habit of excluding nor – even less so – of showing favouritism.

1272. As if that were not enough, article 52 of the Constitution of the Bolivarian Republic of Venezuela provides that: "Everyone has the right to assemble for lawful purposes, in accordance with law. The State is obligated to facilitate the exercise of this right". It is clear from this quotation that the right of association is a fundamental human right that has been promoted by our Government and enshrined in the form of a constitutional provision. One is constantly struck by the fact that the complainants can find it within themselves to use this argument to claim that they are in the presence of an exclusive, discriminatory and excluding right that applies only to them, this in itself being contrary to the legislation in force, for which reason their claim should be rejected, as we indeed request.

1273. As regards the alleged attack on freedom of expression, it is important to note that nowhere in the arguments put forward by the IOE and FEDECAMARAS does one find any evidence that those arguments are related to the provisions of the Articles of Convention No. 87, for which reason they do not form part of the subjects that the CFA, under its mandate, is called upon to examine with a view to expressing conclusions or recommendations.

1274. As regards the alleged absence of bipartite and tripartite consultation and social dialogue, the Government points out that it has always acknowledged, and will continue to acknowledge, the role of all of the organizations that coexist within Venezuela, including FEDECAMARAS, without exclusions or favouritism as occurred in the recent past when employers' organizations going back a long way in terms of their foundation, and highly representative of certain sectors of our social and economic life, did not participate. In January 2007, the Ministry of the People's Power for Labour and Social Security, through the Department of International Relations and Liaison with the ILO, called FEDECAMARAS to a meeting that included all of the organizations representing employers, to facilitate an exchange of opinions and consultation between them. With this, the Government was and is complying with Convention No. 144 on tripartite consultation and was thus promoting the consultation process, with the aim of enabling the formation – in good time – of the Employers' delegation that will be attending the 96th Session of the International Labour Conference to be held, as is customary, in June 2007 in Geneva.

1275. Further to the above, and in order to counteract the false assertions made by the IOE and FEDECAMARAS, it has to be pointed out that meetings have recently been held between the employers' sector, workers and the Venezuelan Government, as represented by the Ministry for Light Industries and Trade through the Framework Agreement on Joint Responsibility for Industrial Transformation, with the result that 1,011 companies have been reactivated (since May 2005) to the benefit of 146,593 workers, with the amount of state financing having reached 1,273 million bolívars, of which 509 million were disbursed by the State in December 2006. Within this context, and in order once again to show that the Government believes in inclusive and productive dialogue, on 10 February of this year the labour regulation meeting of the construction sector was initiated, covering a total of some 800,000 workers. An active participant therein is the Chamber of Construction belonging to FEDECAMARAS, which fact in itself counteracts the complainants' allegation.

1276. As regards the setting of the minimum wage, article 172 of the Organic Labour Act provides that: "Without prejudice to the provisions of the preceding articles, the National Executive, in the event of disproportionate increases in the cost of living, having first heard the most representative employers' and workers' organizations, the National Economic Council and the Venezuelan Central Bank, shall be empowered to set mandatory minimum wage levels applicable on a general or restricted basis according to the categories of worker or geographic areas in question, having regard to the respective characteristics of the economic circumstances. Such wage-setting shall be effected by decree, in the manner and under the conditions laid down in articles 13 and 22 of this Act". It is clear from this article that the Executive is able, after hearing the most representative employers' and workers' organizations, to set minimum wages, doing so by decree in the manner laid down in the same Organic Labour Act. This being the case, there is no evidence whatsoever to show that the Venezuelan Government, in decreeing minimum wages in the manner laid down in and permitted under the Act, is violating any provisions, and even less so the provisions of Convention No. 87, proof of which is to be seen in the consultations held on 24 April 2007 with FEDECAMARAS in regard to setting of the minimum wage (see corresponding attachment).

1277. As regards the alleged absence of social dialogue, it is important to reiterate, point out and emphasize (as was pointed out in a communication dated 7 February 2007) that the dialogue has been becoming ever more varied and widespread, particularly in 2005 and 2006, during which period the Government (national, regional and local) and FEDECAMARAS held countless meetings – as we have informed the ILO's various supervisory bodies, including the Governing Body's Committee on Freedom of Association – attended by the President of the Republic and Vice-President of the Republic, ministers and senior officials, to discuss a range of issues. In addition, over 50 meetings were held during the same period with all of the social partners, without prejudice to other consultations carried out in writing or through surveys.

1278. This social dialogue, which includes meetings of the regional and sectoral chambers with national, regional and local authorities, is linked to a sovereign and popular government policy, having together constituted key factors for economic growth over the past ten quarters through lower inflation, lower interest rates, the reduction of certain taxes (for example, on bank overdrafts), lower unemployment with the reuse of almost the entire installed industrial capacity and growth of formal employment, thanks to ongoing investment in health, education and vocational training, as well as in the transport infrastructure (highways, subway systems, railways, bridges, dams) and in social (including dwellings, hospitals, schools, colleges and labour inspectorates) and industrial infrastructure.

1279. However, in the Bolivarian Republic of Venezuela one also finds the conditions that enable such social dialogue: solid and independent employers' and workers' organizations with access to information and social dialogue, and the political will and commitment on the part of all social partners to engage in social dialogue in good faith.

1280. In Venezuela there is clear and constant respect for labour rights, particularly freedom of association and voluntary collective bargaining – institutions which are growing in strength with institutional support. Finally, there is mutual respect and recognition among all of the social partners, who are now convinced of the need to broaden social dialogue and make it all-inclusive. Proof of the misrepresentation of the facts invoked in 2006 is to be seen in the approval of the Lopcymat regulations, achieved by consensus through broad and inclusive social dialogue, with the benefit of valuable comments from the ILO's Standards Department, making it difficult for them to claim that Venezuela has not fostered social dialogue.

1281. Regarding the allegations as to legal reforms and the adoption of new regulations without any consultation of the employers' organizations, where they point to the Enabling Act, setting of the minimum wage and decree on labour solvency as a demonstration of this, the Government wishes to make the following statements: "The allegation relating to the Enabling Act is a total misrepresentation, since it is an open and well-known fact that in Venezuela a participative and protagonistic democracy is taking shape in which all of the sectors are constantly being consulted. We fail to understand how it is possible to attack this Enabling Act without being aware of its results; indeed, for us it could be the step that precedes a reform of the labour laws on which so much insistence has been placed (in the ILO) and by means of which we could resolve a number of situations such as those referred to in articles 95 and 293 of the Constitution of the Bolivarian Republic of Venezuela. Finally, in a spirit of cooperation, we shall be keeping the honourable members of the Committee informed in regard to any acts that come into being through the Enabling Act and which fall within the scope of Convention No. 87".

1282. In the same order of ideas, it is to be noted that the Minister for Labour and Social Security, José Ramón Rivero, a trade union leader from the Hierro area in the State of Bolívar, is a member of the Presidential Council for Constitutional Reform, as can be seen from *Gaceta Oficial* No. 38607 of 18 January 2007, a copy of which is attached hereto.

1283. As regards the setting of the minimum wage, the IOE and FEDECAMARAS mistakenly state that the national Government has not complied with the procedure for setting of the minimum wage, and, even more seriously, that FEDECAMARAS was asked for its opinion only 24 hours before the setting and official publication of the wage, this being a falsification of the truth. By way of proof of that falsification, it is important to point out that the Government did indeed consult with the trade union associations that coexist within the Venezuelan State in regard to the setting of the minimum wage, evidence for which is to be found in communication No. 047, dated 24 April 2007, sent to the President of FEDECAMARAS, in which the following request, quoted literally, is made: "I am writing to you, in accordance with the provisions of Article 172 of the Organic Labour Act, with the formal request that you express an opinion in regard to the setting of the minimum wage. As you are aware, it is the responsibility of the National Executive to take a decision in this regard, taking into account, among other variables and indicators, the cost of the food basket. With this we will be giving effect to the right that is recognized in Article 91 of the Constitution of the Bolivarian Republic of Venezuela …". It is likewise important to point out that the assertion is false to the extent that, while the aforementioned communication was received on 24 April, there has as yet been no announcement of the minimum wage, this being evidence that the Government has not violated and will never violate any procedure or agreement.

1284. As regards the decree on labour solvency, the Government declares that labour solvency was implemented and began to operate within our labour legislation some 80 years ago, and is also to be found in the first Social Security Act promulgated in the 1940s, where it was made mandatory for both employers and workers to pay their social security contribution, something which the vast majority of unscrupulous employers had been failing to do.

1285. With a view to putting an end to the culture of non-compliance with the Act that had arisen as a result of past ineffectiveness and decadence in the labour inspectorate function, a new labour solvency certificate recently entered into force, which prohibits the State from concluding contracts, allocating foreign currency, issuing import or export licences, or offering preferential loans from public institutions to any employers which do not comply with labour, union and social security rights. This measure was adopted after several months of social dialogue and its entry into force was postponed at the request of FEDECAMARAS, as can be seen from the attached correspondence in that regard, covering the period up to 1 May 2006. This is an expeditious and simple procedure that in no way undermines corporate management. On the contrary, it has enhanced the functioning of the Venezuelan State and the collection of social security contributions in the interests of better service provision and respect for human rights. Labour solvency has led to greater compliance with reinstatement orders issued by the labour administration and a significant increase in the collection of social security contributions resulting in constant improvements to the system. One social security institution alone increased its intake by 32.5 per cent, with an additional amount of US$30.6 million in just one month for the benefit of workers. Far from constituting a form of control or harassment of employers, as they would have it believed, labour solvency provides an incentive to make corporate social responsibility a reality, an essential condition for the existence of the common good, one of the fundamental values of the ILO, which is why the present complaint must be declared unfounded.

1286. As regards the alleged restrictions on the benefits of international cooperation, nowhere in the arguments put forward by the IOE does one find any evidence that they are related to the provisions of the Articles of Convention No. 87, for which reason they do not form part of the subjects that the CFA, under its mandate, is called upon to examine with a view to expressing conclusions or recommendations, these being matters which fall solely within the competence of the Venezuelan State, and particularly the Venezuelan legislature.

1287. As regards the alleged harassment of employers' leaders, the Government declares that in the Bolivarian Republic of Venezuela there is no harassment either of employers' leaders or trade union leaders. The IOE and FEDECAMARAS allege that the Venezuelan Government has harassed the private sector, but fail to demonstrate the nature, as they see it, of that harassment, in regard to which they make three points which will be disproved below.

1288. In relation to the alleged violations of private property, the Government points out that in Venezuela there is no confiscation of property; thus from the outset the employers' claims constitute a falsification. In relation to the decree with the rank and force of the Act on land and agricultural development published in *Gaceta Oficial* No. 37323 of 13 November 2001, it is important to be aware that the employers affiliated to FEDECAMARAS instituted appeals and requests for legal opinions that were duly decided upon by the Supreme Court of Justice, whose Constitutional Division stated the following:

> First: The constitutionality of Articles 82 and 84 of the decree with the rank and force of Act on Land and Agricultural Development published in *Gaceta Oficial* No. 37323 of 13 November 2001.

Second: The full validity of the provisions contained in Articles 25, 40 and 43 of the decree with the rank and force of Act on Land and Agricultural Development, published in *Gaceta Oficial* No. 37323 of 13 November 2001 is understood and thus acknowledged in the terms set forth in this decision.

Third: The unconstitutionality of Articles 89 and 90 of the decree with the rank and force of Act on Land and Agricultural Development, published in *Gaceta Oficial* No. 37323 of 13 November 2001.

1289. In the light of the foregoing, it is clear that the employers belonging to FEDECAMARAS exercised the remedies available to them under the law, and that the Constitutional Division of the Supreme Court of Justice ruled in their favour in declaring a number of articles to be unconstitutional, making it difficult for them to claim that the said decree-law constitutes a violation of private property.

1290. Similarly, in regard to the alleged invasions of ranches and other violations, this complaint is totally without foundation, in the absence of any proof or supporting evidence. Institutions and the public at large are fully aware that Venezuela is a constitutional State in which the rule of law prevails, and that whenever any infringement or violation of the law occurs the facts must therefore be brought before the competent authorities in the form of an official complaint backed up by the corresponding evidence proving that the events described, in this case by the complainants in their complaint, actually took place. The least they could have done would have been to attach to the complaints they made before the administrative and judicial organs of the Venezuelan State the amended complaint submitted to the CFA. We therefore deplore the fact that there was no firm substantiation of the arguments put forward by the FEDECAMARAS employers, and we would request the honourable Committee to judge this case on its merits and reject it for the reasons set forth above.

1291. In regard to the alleged persecution of employers' leaders, the Government states, with respect to this "already well-worn" allegation on the part of the IOE and FEDECAMARAS, that Mr Carlos Fernández remains an expatriate. It is to be noted that it was this gentleman himself who decided to leave the country following his release by a court of appeal, subsequent to his having been charged by the Office of the Public Prosecutor (Sixth Prosecuting Attorney) with the crimes of criminal damage, conspiracy and sabotage during the "illegal" oil strike that took place between December 2002 and 2003.

1292. That indictment and bringing to trial was not initiated by the Executive but by an independent and totally autonomous authority, namely the Citizen Power, through the Office of the Public Prosecutor, in view of the fact that the acts committed by Mr Carlos Fernández, in his capacity as President of FEDECAMARAS, caused incalculable and immeasurable damage both to the population, with the violation of basic human rights, and to the oil industry, with a huge increase in unemployment, inflation, the flight of foreign currency and a major economic slowdown.

1293. It has to be said, moreover, that the provisions of Convention No. 87 neither authorize nor legitimize actions taken against the legal order, but rather require the representatives of the social partners or labour actors to respect the basic rules of civic and democratic coexistence. In its Article 7.1, Convention No. 87 states: "In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land".

1294. The Government and the public at large were victims of the irresponsible behaviour on the part of Mr Carlos Fernández and his FEDECAMARAS associates at that time. This gentleman overstepped the mark during the oil strike and committed the abovementioned

crimes (far removed from the exercise of his trade union activity) with which he was charged by the Office of the Public Prosecutor and which have been brought before the seat of the judiciary. He fled the country without facing justice, despite having obtained favourable rulings, with several of the charges originally formulated having been dismissed by the judges dealing with the case. The Criminal Division of the Supreme Court of Justice cancelled the ruling pronounced by the Court of Appeal. The Constitutional Division of the Supreme Court of Justice handed down a decision ordering his definitive arrest, by which time Mr Fernández was outside the country, being now a fugitive from justice

1295. As regards the allegations concerning the legal situation of Ms Albis Muñoz, former President of FEDECAMARAS, the Government reiterates that in the Bolivarian Republic of Venezuela there is a clear and obvious division in the public authorities, for which reason citizen Muñoz is unable to criticize or blame the Government for the situation in which she finds herself vis-à-vis the Office of the Public Prosecutor.

1296. As regards the alleged misuse of authority in the area of fiscal management, there is no evidence that the allegations are related to the provisions of the Articles of Convention No. 87, for which reason they do not form part of the subjects that the CFA, under its mandate, is called upon to examine with a view to expressing conclusions or recommendations, these being matters which fall solely within the policy-making and procedural competence of the Venezuelan State.

1297. On the basis of all of the foregoing arguments, the Government rejects each and every one of the complainants' assertions inasmuch as the arguments they put forward contain nothing whatsoever to prove any non-fulfilment or violation by the Bolivarian Republic of Venezuela of Convention No. 87, the Committee being requested to draw the same conclusion.

1298. To conclude, the Government considers it important to point out that both the IOE and FEDECAMARAS are making baseless and unsubstantiated accusations, and that the CFA should therefore conduct a review to determine whether such accusations meet the specified criteria, and whether they are of a content and quality that enables determination of whether or not a State (in this case the Venezuelan State) is failing to comply with the Convention referred to in the information submitted by the IOE and FEDECAMARAS.

1299. In its communication of 14 September 2007, the Government declares, in regard to the allegations of harassment of FEDECAMARAS by pro-government mobs, that in the Bolivarian Republic of Venezuela there is no harassment either of employers' leaders or trade union leaders. The IOE and FEDECAMARAS allege that the Venezuelan Government has harassed the private sector, but fail to demonstrate the nature, as they see it, of that harassment. The attack carried out on the FEDECAMARAS premises has nothing to do with any action undertaken by the Government. This accusation is therefore totally groundless, and there is no evidence to prove or substantiate the linkage of which the complainants claim to have evidence.

1300. Institutions and the public at large are fully aware that the Bolivarian Republic of Venezuela is a constitutional State in which the rule of law prevails, and that whenever any infringement or violation of the law occurs the facts must therefore be brought before the competent authorities in the form of an official complaint backed up by the corresponding evidence proving that the events described, in this case by the complainants in their complaint, actually took place. The least they could have done would have been to attach to the complaints they made before the administrative and judicial organs of the Venezuelan State the amended complaint submitted to the CFA. The Government therefore deplores the fact that there was no firm substantiation of the arguments put

forward by the FEDECAMARAS employers, and requests the honourable Committee to judge this case on its merits and reject it for the reasons set forth above.

1301. As regards the allegation concerning the establishment of parallel employers' institutions fostered by the Government, such as the Confederation of Socialist Employers, the Government confirms that it does not interfere in the freedom that the various employers' organizations can enjoy in regard to their freedom to associate, so they are hardly in a position to state that there is opportunism, favouritism or interference in regard to any confederation. The Government denies that the CESV was set up under its patronage, and there are even fewer grounds for them to state that the intention is to switch consultations from any one to any other employers' grouping, since this Government is neither in the habit of excluding nor – even less so – of showing favouritism. As if that were not enough, article 52 of the Constitution of the Bolivarian Republic of Venezuela provides that: "Everyone has the right to assemble for lawful purposes, in accordance with the law. The State is obligated to facilitate the exercise of this right". It is clear from this quotation that the right of association is a fundamental human right that has been promoted by our Government and enshrined in the form of a constitutional provision.

1302. As regards the convocation to the swearing-in and official inauguration of the Confederation of Socialist Employers of Venezuela, a copy of which is annexed to the document containing the new allegations, this was an event to which, as is quite rightly stated, the President of the Bolivarian Republic of Venezuela was invited, this being fully in accordance with the aim of maintaining good relations with a sector that contributes to the diversification of employment, industrial restructuring and modernization of the business sector in Venezuela. In the same way, it is quite normal to see senior officials from the administration participating in acts or events hosted by private sector organizations, without this implying any form of intervention by the Government in their activities or, even less so, any favouritism to the detriment of the freedom of association that stems from ratification of international conventions such as Convention No. 87 and which, moreover, is enshrined in our Constitution.

1303. Proof of this is to be seen in, among other examples, the many meetings that have taken place between the President of the Foreign Exchange Administration Commission (CADIVI), Mr Manuel Barroso, and representatives of various productive sectors requiring currency; and, more recently, in the meeting held between the National Customs and Tax Superintendent, Mr José Gregorio Vielma Mora, and the most senior officials of FEDECAMARAS – a meeting that was described by its current President, Mr José Manuel González, as an excellent technical meeting which "… opened up the dialogue, thereby demonstrating that only by this means is it possible to resolve the country's problems".

1304. The Government rejects each and every one of the assertions made by the IOE and FEDECAMARAS inasmuch as the arguments put forward by those entities contain nothing whatsoever to prove any non-fulfilment or violation by the Bolivarian Republic of Venezuela of Convention No. 87, the Committee being requested to draw the same conclusion. To conclude, the Government reiterates that both the IOE and FEDECAMARAS are making baseless and insufficiently substantiated accusations.

E. The Committee's conclusions

1305. *The Committee notes that the issues that remained pending at the time the case was last examined include: (1) deficiencies in the social dialogue and the bipartite and tripartite consultations that are held with FEDECAMARAS, as well as the failure to convene the National Tripartite Commission as provided for in the Labour Code; and (2) the arrest order issued for Mr Carlos Fernández, former President of FEDECAMARAS, for the*

legitimate exercise of activities in the defence of the interests of employers' organizations and their affiliates.

1306. *The Committee also notes the new allegations made by the IOE, dated 19 May 2006, 31 March and 25 May 2007, concerning:*

– *the establishment of the Confederation of United Socialist Entrepreneurs of Venezuela (CESU), with the support of the Government and other organizations linked to the regime, which support the Government's political agenda and the consolidation of "Socialism of the twenty-first century"; the establishment of social production enterprises which enjoy privileges granted by the State or by public enterprises, which has destabilized certain sectors of entrepreneurial activity; the announcement of the presence of the President of the Republic at the official inauguration ceremony of the CESU (at that organization's invitation), and the appointment of the President of the Republic as honorary president of Employers for Venezuela (EMPREVEN) in recognition of support provided (EMPREVEN is the main organization within the CESU);*

– *the withdrawal of the licence of Canal 2, Radio Caracas Televisión (RCTV), one of the two remaining private and independent television channels, as well as constant threats by the Government aimed at two other channels which have had to change their editorial line;*

– *a complete lack of genuine social dialogue and tripartite consultations, with consultations being held as a mere formality, without any intention of taking into account the opinions of independent social actors (this is the case with regard to minimum wages, the labour solvency decree and the "Enabling Act", authorizing the President of the Republic to issue decrees with rank of laws in various fields, including economic, social, financial and territorial matters, without consultation or social dialogue, for a period of 18 months);*

– *the paralysis and closure of enterprises as a consequence of the application of the Labour Solvency Act, issued through a presidential decree. In practice, membership of FEDECAMARAS is an obstacle with regard to obtaining labour solvency;*

– *draft law on international cooperation (approved in first reading by the National Assembly), in light of which the Government receives and administers, through the Fund for International Cooperation and Assistance, resources originating from bequests, donations and other resources destined to support cooperation between countries that may be received from public, private, domestic or foreign institutions;*

– *the harassment of employers' leaders through hostile speeches given by the President of the Republic, in which the employers' leaders are discredited and treated with contempt and which contain threats regarding the confiscation of property for reasons of supposed social interest; the violation of the private property of several business leaders in the agricultural and livestock sector involving invasions, the confiscation of land or expropriation without fair compensation in light of administrative rulings or procedures;*

– *the illegal maintenance of preventative measures regarding the exit from the country of Ms Albis Muñoz, former President of FEDECAMARAS; the persecution of other employer officials (eight are referred to by name);*

– *an arbitrary approach on the part of the authorities with regard to fiscal policy, negatively affecting enterprises whose heads have spoken out against the Government's policies and intimidation of Venezuelan entrepreneurs, in particular*

threats of exorbitant fines, the untimely closure of enterprises or the carrying out of inspections;

– *the violent invasion of FEDECAMARAS headquarters by pro-government mobs, who daubed graffiti on FEDECAMARAS property, as well as causing damage and making threats, and;*

– *the non-independent employers' organization EMPREVEN was for two years located in an area where numerous public bodies are to be found.*

1307. *The Committee notes the Government's general statements to the effect that the complainant organizations' complaints have no basis and lack sufficient grounds (vague allegations, failure to present the denunciations made to the ILO to the national authorities or lack of evidence) and that the Committee does not have competence with regard to certain allegations, i.e. those concerning economic, monetary and foreign exchange policies which discriminate against enterprises close to FEDECAMARAS; those allegations regarding arbitrariness in fiscal policy, negatively affecting enterprises whose heads have criticized the Government's policies (involving threats of exorbitant fines, the untimely closure of enterprises or the carrying out of inspections); those concerning international cooperation funds (according to the allegations, the Government receives and administers, through a fund, donations and other resources destined to support cooperation from public, private, domestic or foreign institutions), and those allegations concerning attempts to limit freedom of expression. The Committee wishes to recall that the present complaint has been examined on various occasions over the last few years and that it has given rise to conclusions which refer to violations of the rights of employers' organizations, and that there were thus grounds for the allegations examined; it also states that the new allegations made by the complainant organizations suggest there is a climate of intimidation and serious unease among the organizations belonging to FEDECAMARAS (the most representative national employers' organization) and that these allegations are sufficiently precise for the Government to undertake investigations and if needs be directly to request information from FEDECAMARAS. The Committee therefore regrets that in its response the Government did not take a more constructive approach, even denying that the Committee had competence with regard to certain allegations, as well as ignoring the recommendations made by the Committee when it last examined the case, at which time it offered for the second time the technical assistance of the ILO to establish a system of labour relations based on the principles of the ILO Constitution and its fundamental Conventions, so that social dialogue could be consolidated and placed on a permanent footing. The Committee also requested that, as a first step, the National Tripartite Committee (as provided for in the Labour Code) be reconvened. The Committee reiterates these recommendations and suggests establishing a national, high-level joint committee in Venezuela with the assistance of the ILO, to examine each and every one of the allegations presented to the CFA in order to resolve problems through direct dialogue.*

1308. *With regard to allegations concerning (1) economic, monetary and foreign exchange policies which the Government considers are not within the competence of the Committee, and on which the complainants allege their use for discriminatory purposes; (2) the other allegations that the Government also considers as falling outside the competence of the Committee the arbitrary approach with regard to fiscal policy, negatively affecting enterprises whose heads have criticized the Government's policies; limitations regarding international cooperation funds; and allegations concerning attempts to limit freedom of expression), the Committee reminds the Government that these matters are related to Conventions Nos 87 and 98 as all economic, social or foreign exchange policies that affect the interests of employers should be the subject of consultations with employers' organizations, and any concrete decision made by the authorities concerning these matters could be based on the intent to discriminate against specific employers belonging to a*

determined organization; furthermore, the Committee emphasizes that the rights of employers' and workers' organizations can only be exercised within the framework of a system that guarantees the effective respect of the other fundamental human rights; and that measures taken against the media used by employers' organizations or which are more or less in tune with the employers' socio-economic stance can impede the means through which employers' organizations exercise their freedom of expression. The Committee therefore requests the Government to respond in detail to the allegations concerning the issues mentioned.

1309. *More specifically, with regard to the allegations concerning the draft law which would involve limitations concerning international cooperation funds (state intervention regarding donations and cooperation resources and assistance received by the organizations of employers from public or private institutions), the Government states that these allegations are not related to Convention No. 87, because, in its opinion, policies and developments affecting this issue are the exclusive competence of the State. The Committee recalls that any assistance or support that an international trade union organization might provide in setting up, defending or developing national trade union organizations is a legitimate trade union activity, even when the trade union tendency does not correspond to the tendency or tendencies within the country; furthermore, trade unions should not be required to obtain prior authorization to receive international financial assistance in their trade union activities [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 739 and 743]. The Committee requests the Government to guarantee that these principles are respected when the draft law is being elaborated and that the State will not intervene in the matter of donations and resources received by employers' and workers' organizations at the national or international level. The Committee requests the Government to keep it informed in this regard.*

1310. *As to certain alleged restrictions to fundamental rights (the withdrawal of Canal 2, Radio Caracas Televisión's (RCTV) licence and Government threats that have led two channels to change their editorial line), the Committee does not share the view that these allegations do not fall within its mandate. The Committee emphasizes the close link between the rights of employers' organizations and the exercise of fundamental rights in practice, including freedom of expression. The Committee recalls that in a case in which the major communications media had been closed down for months, the Committee emphasized that the right of workers' and employers' organizations to express their views in the press or through other media is one of the essential elements of freedom of association; consequently the authorities should refrain from unduly impeding its lawful exercise [see* ***Digest****, op. cit., para. 159] and should fully guarantee freedom of expression in general and in particular that of employers' organizations. The Committee requests the Government to guarantee that this principle is respected in particular with regard to the communications media used by FEDECAMARAS. The Committee also requests the Government to refrain from all interference in the editorial line of independent communication media, including the use of economic or legal sanctions, and to guarantee through the existence of independent means of expression, the free flow of ideas, essential to the life and well-being of employers' and workers' organizations.*

1311. *The Committee observes that the complainants allege that there is a complete lack of genuine social dialogue and tripartite consultations, with consultations being held as a mere formality, without any intention of taking into account the opinions of independent social actors (this is the case with regard to minimum wages, the labour solvency decree and the "Enabling Act", authorizing the President of the Republic to issue decrees with rank of laws in various fields, including economic, social, financial and territorial matters, without consultation or social dialogue, for a period of 18 months);*

1312. *The Committee notes the Government's statements to the effect that dialogue has grown increasingly diverse and far-reaching, especially in 2005 and 2006. During this period the national, regional and local governments and FEDECAMARAS held many meetings, with the participation of the President and Vice-President of the Bolivarian Republic of Venezuela, ministers and high-level officials, covering a variety of subjects. Similarly, over the same period, over 50 meetings were held with the social partners, not to mention other consultations in writing or through inquiries. The social dialogue includes regional and sectoral chambers. The Government has always recognized, and shall continue to recognize, the role of FEDECAMARAS and the other employers' organizations, without exclusion or exception. On 25 and 29 January 2007, through the Directorate of Foreign Affairs and Relations with the ILO, the Ministry of Labour and Social Security invited FEDECAMARAS to a meeting involving all representative employers' organizations for an exchange of views and consultations in order that the Employers' delegation could be formed in time for the 96th Session of the International Labour Conference in June 2007. Social dialogue, which includes meetings of regional and sectoral chambers with national, regional and local authorities, is closely linked to a sovereign and popular government policy, composed of elements essential to the economic growth that has been achieved over the last ten financial quarters, and to the reduction of inflation. The Government refers to the Organic Act on Prevention, Working Conditions and the Working Environment (Lopcymat), agreed upon through social dialogue, as well as to the Framework Agreement on Joint Responsibility concerning industrial restructuring which made it possible to revive 1,011 enterprises. A labour standards meeting for the FEDECAMARAS-affiliated construction sector was held in February 2007. Furthermore, on 24 April 2007 consultations were held with FEDECAMARAS concerning the setting of minimum wages and it is not true that a deadline of only 24 hours was set (no announcement has yet been made regarding the increase). The Committee notes that the Government has sent, in annexes, the minutes of numerous meetings held between enterprises or chambers of commerce and the currency administration commission (CADIVI) in order to examine the enterprises' concrete problems. Similarly, according to the Government, the conditions necessary for this social dialogue exist: there are solid, independent organizations of workers and of employers, which have access to information and social dialogue. All the social partners have the political will and are willing to make the commitment necessary in order to participate in social dialogue in good faith. The social partners recognize and respect one another, and are all now convinced of the need to widen social dialogue in an inclusive manner. Furthermore, the Government has stated that it does not understand how anyone could attack the Enabling Act without knowing what its outcome will be, given that it could provide the solution to certain questions raised by the ILO.*

1313. *Notwithstanding the information provided by the Government demonstrating that social dialogue exists and that it has even borne fruit, the Committee is of the opinion that the allegations also show that this dialogue remains unsatisfactory and that, in the view of the IOE and FEDECAMARAS, the consultations are in general pure formalities, take place with organizations unilaterally chosen by the Government and that not enough is being done to find shared solutions. Furthermore, the number of meetings mentioned by the Government with FEDECAMARAS organizations does not in itself demonstrate that there is adequate support for social dialogue, given that FEDECAMARAS is composed of a high number of regional and sectoral chambers. 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 and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers [see* ***Digest****, op. cit., paras 1074–1075]. The Committee requests the Government to keep it informed with regard to any bipartite and tripartite consultations with FEDECAMARAS and any negotiations or agreements with this central organization or its regional structures and to transmit the corresponding texts.*

The Committee also requests the Government to ensure that any legislation adopted concerning labour, social and economic issues, within the framework of the Enabling Act, is subject to real, in-depth consultations with the independent and most representative employers' and workers' organizations, while attempting, as far as possible, to find shared solutions.

1314. *The Committee observes that, according to the allegations, the paralysis and closure of enterprises arose as a consequence of the application of the Labour Solvency Act, issued through a presidential decree and, in practice, membership of FEDECAMARAS is an obstacle with regard to obtaining labour solvency. The Committee notes the Government's statements to the effect that: (1) a new labour solvency certificate recently entered into force, which prohibits the State from concluding contracts, allocating foreign currency, issuing import or export licences, or offering preferential loans from public institutions to employers which do not comply with labour, union and social security rights. This measure was adopted after several months of social dialogue, and its entry into force was postponed until 1 May 2006 at the request of the employers of FEDECAMARAS (a communication is attached on this subject); (2) this is an expeditious procedure, that in no way undermines corporate management. Labour solvency has led to greater compliance with reinstatement orders issued by the labour administration and an increase in the collection of social security contributions, resulting in constant improvements to the system; (3) far from constituting a form of control or "harassment" of employers, labour solvency provides an incentive to make corporate social responsibility a reality, an essential condition for the existence of the common good, one of the fundamental values of the ILO. The Government requests the IOE to inform it of the number of enterprises closed under any circumstances, the number of workers who lost their jobs and any reliable and trustworthy statistical studies it might have at its disposal.*

1315. *The Committee requests the IOE to provide this information. However, the Committee is of the opinion that, within the context of current relations between FEDECAMARAS and the Government, one cannot exclude that the granting of labour solvency to enterprises may not be carried out solely on the basis of technical criteria and requests the Government to examine directly with FEDECAMARAS, mechanisms ensuring that "labour solvency" certification is granted in an impartial manner. The Committee also requests the Government to transmit the outcome of the claim made by CONINDUSTRIA that the Labour Solvency Act is unconstitutional.*

1316. *As to the allegations of discrimination against FEDECAMARAS and its affiliate organizations, including the establishment or promotion of organizations or enterprises close to the Government such as, according to the allegations, the CESU or EMPREVEN, the Committee notes the Government's statements to the effect that the establishment of the CESU is an example of the exercise of freedom of association, denying that it was created under the auspices of the Government; it would be discriminatory to single out the CESU. Given the contradiction between the allegations (which have however revealed that the presence of the President of the Republic at the inauguration ceremony was announced in recognition for the support he provided) and the Government's response (stating that the President's attendance is aimed at maintaining good relations with the sector and is not a matter of favouritism), the Committee requests the IOE to provide any information regarding favourable treatment of the CESU by the authorities. The Committee recalls that by according favourable or unfavourable treatment to a given organization as compared with others, a government may be able to influence the choice of workers as to the organization which they intend to join. In addition, a government which deliberately acts in this manner violates the principle laid down in Convention No. 87 that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise; more indirectly, it would also violate the principle that the law of the land shall not be such as to impair, nor shall it be so*

*applied as to impair, the guarantees provided for in the Convention. It would seem desirable that, if a government wishes to make certain facilities available to trade union organizations, these organizations should enjoy equal treatment in this respect [see **Digest**, op. cit., para. 340]. The Committee emphasizes the importance of ensuring that the Government adopts a neutral attitude when dealing with all employers' and workers' organizations and requests the Government to respect the principles referred to above.*

1317. *As to the allegations made by the IOE regarding social production enterprises, with privileges bestowed upon them by the State or by public enterprises, the Committee notes the Government's statement that such accusations are inconceivable and that with their restrictive and, even worse, exclusive vision of the right to unionize, the employers of FEDECAMARAS and the IOE continue to astound with their exclusionary and discriminatory approach. According to the Government, it is common knowledge that social production enterprises are part of the policy aimed at overcoming poverty and democratizing property and wealth, as well as serving as a social mechanism for the empowerment of the population in order to overcome poverty and marginalization. As to the employers' institutions in the country, this matter is related to compliance with Article 3(2) of ILO Convention No. 87, referred to by the IOE. The State cannot limit this right. These institutions were established by legitimate means, as was FEDECAMARAS, and do not receive any special treatment. The Committee invites the IOE to provide new information and clarification on this allegation, and requests the Government to ensure a neutral attitude in treatment of and relations with all employers' organizations and their members.*

1318. *As to the allegation concerning the illegal maintenance of preventative measures regarding the exit from the country of Ms Albis Muñoz, former President of FEDECAMARAS, and the blocking of access to her credit card, the Committee notes the Government's statements regarding Ms Albis Muñoz and in particular that: (1) it has always done everything that it could in order to facilitate the due participation of the representatives of all the organizations in ILO events; (2) in the Bolivarian Republic of Venezuela, there is a clear separation of public powers; (3) the Government regrets that the instructions that were supposed to be issued by the Judicial Power in time for the 16th American Regional Meeting (Brasilia, 2–5 May 2006) were not received within a reasonable time period by the relevant authorities (emigration) and that the alleged absence occurred. However, the Government recalls to the Committee that immediately afterwards, Ms Muñoz attended the 95th Session of the International Labour Conference in Geneva in June 2006, and that the Government has an interest in, and encourages the participation of, all the social partners in both regional and international events and, therefore, categorically rejects the arguments put forward by the IOE regarding supposed government harassment; (4) Ms Albis Muñoz is now involved in legal proceedings, and in the light of the separation of powers, the Government cannot be held responsible for this person's involvement with the Public Prosecutor's Office.*

1319. *The Committee observes, nevertheless, that according to the allegations, Ms Albis Muñoz was not permitted to attend an ILO regional seminar in Panama in February 2006, despite being legally authorized to do so. In addition, it is alleged that the ban on leaving the country without legal authorization is a preventative measure that should have already expired, since such measures cannot last for more than two years. With regard to the restrictions on the freedom of movement of Mr Carlos Fernández, former President of FEDECAMARAS, currently in exile by virtue of a warrant for his arrest and charging as a result of his activities as an employers' leader, the Committee notes with regret that the Government reiterates its previous statements (according to which, he overstepped the mark with his actions during an oil stoppage and committed offences) and has not implemented the Committee's recommendations made the last time this case was examined. The Committee draws attention to the importance that it attaches to the*

*principle set out in the Universal Declaration of Human Rights that everyone has the right to leave any country, including his own, and to return to his country [see **Digest**, op. cit., para. 122], particularly when participation in the activities of organizations of employers or workers abroad is involved. The Committee requests the Government to ensure the freedom of movement of the leaders, Ms Albis Muñoz and Mr Carlos Fernández, and to take the necessary steps to annul the judicial proceedings and arrest order against Mr Carlos Fernández so that he may return to the country without risk of reprisals. The Committee requests the Government to send information on the eight employers' leaders mentioned by name by the IOE whose freedom of movement is restricted, according to the allegations.*

1320. *As to the allegations of: violations of the private property of several employers' leaders in the agricultural and livestock sector; victims of invasions; the confiscation of land or expropriation without fair compensation, frequently in spite of rulings made by the judicial authorities regarding the restitution of lands to their owners, the Government states that no property has been confiscated and that the complainant organizations distort the truth. It further indicates that the Constitutional Chamber found that two articles of the Land and Rural Development Act were unconstitutional on the basis of proceedings brought by employers affiliated to FEDECAMARAS. As to alleged invasions of farms and other abuses, the Government states that the complainant organizations have not submitted any complaints to the authorities, nor have they provided any evidence. The Committee recalls that the submission of complaints in the framework of its procedure does not require the prior use of domestic remedies and requests the Government to respond precisely to the specific allegations made by the IOE, including those relating to the measures taken against employers' leaders, Mr Mario José Oropeza and Mr Luis Bernardo Meléndez, and the serious allegations regarding the abduction of three sugar producers in 2006 and the death of six producers following an assault.*

1321. *As to the alleged harassment of employers' leaders through hostile speeches given by the President of the Republic in which he makes damaging remarks and disparages employers' leaders, threatening to confiscate their property on supposed grounds of social interest, the Committee requests the Government to provide its observations in this regard without delay.*

1322. *In addition, as to the serious allegations made by the IOE dated 25 May 2007 that a pro-governmental mob forced its way into the head office of FEDECAMARAS, daubing graffiti, damaging property and making threats, the Committee notes that the Government points out that the attack suffered by FEDECAMARAS bears no relation to any action taken by the Government, that the complainant organizations fail to provide any evidence of links to the Government and that they have not submitted any complaints to the competent authorities. The Committee regrets that despite these serious acts of violence and even after a complaint was submitted, the Government has not ordered an investigation into the allegations. The Committee stresses the Government's obligation to ensure that employers' organizations can exercise their rights in an environment free of fear, intimidation and violence and urges the Government to undertake without further delay an investigation with a view to identifying the guilty parties and to instituting legal proceedings so that they can be duly prosecuted and punished and thereby prevent the repetition of these offences. The Committee requests the Government to ensure the security of both the FEDECAMARAS head office and its leaders from now on and to inform the Committee on the outcome of the investigations without further delay.*

1323. *Overall, taking into account the seriousness of these and other allegations regarding the climate of intimidation surrounding leaders of employers' organizations and their members, the Committee emphasizes that freedom of association can only be exercised in conditions in which fundamental rights are fully respected and guaranteed, and that the*

rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected [see ***Digest****, op. cit., paras 33 and 34].*

1324. *Finally, the Committee requests the Government to transmit its observations in respect of the allegations of the IOE dated 11 October 2007.*

The Committee's recommendations

1325. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) Overall, taking into account the seriousness of the allegations that show a climate of intimidation surrounding leaders of employers' organizations and their members, the Committee stresses its concern and emphasizes that freedom of association can only be exercised in conditions in which fundamental rights are fully respected and guaranteed, and that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected.

(b) The Committee regrets the fact that the Government has ignored the recommendations made by the Committee at the last examination of the case, at which time it offered for the second time the technical assistance of the ILO to establish a system of labour relations based on the principles of the ILO Constitution and its fundamental Conventions, so that social dialogue could be consolidated and placed on a permanent footing. The Committee also requested that, as a first step, the National Tripartite Committee (as provided for in the Labour Code) be reconvened. The Committee reiterates these recommendations and suggests establishing a national, high-level joint committee in Venezuela with the assistance of the ILO, to examine each and every one of the allegations presented to the CFA in order to resolve problems through direct dialogue.

(c) As to the allegations concerning deficiencies in social dialogue, 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 and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate independent and most representative organizations of workers and employers. The Committee requests the Government to keep it informed with regard to any bipartite and tripartite consultations with FEDECAMARAS and any negotiations or agreements with this central organization or its regional structures and to transmit the corresponding texts. The Committee also requests the Government to ensure that any legislation adopted concerning labour, social and economic issues within the framework of the Enabling Act be subject to real, in-depth consultations with the independent and most representative employers' and workers' organizations, while attempting as far as possible to find shared solutions.

(d) As to the allegations concerning the Labour Solvency Act and its application, the Committee requests the IOE to provide further information on the enterprises which have closed owing to this Act, the number of workers who lost their jobs and any statistics at its disposal. The Committee requests the Government directly to examine, with FEDECAMARAS, mechanisms ensuring that "labour solvency" certification is granted in an impartial manner. The Committee also requests the Government to transmit the outcome of the claim made by CONINDUSTRIA that the Labour Solvency Act is unconstitutional.

(e) With regard to allegations concerning (1) economic, monetary and foreign exchange policies which the Government considers are not within the competence of the Committee, and on which the complainants allege their use for discrimination purposes; (2) the other allegations that the Government also considers as falling outside the competence of the Committee the arbitrary approach with regard to fiscal policy, negatively affecting enterprises whose heads have criticized the Government's policies; limitations placed on international cooperation funds; and allegations involving attempts to limit freedom of expression), the Committee requests the Government to respond in detail to the allegations concerning the questions referred to above.

(f) However, with regard to the allegations concerning the draft legislation which would involve the introduction of limitations concerning international cooperation funds (state intervention concerning donations and cooperation resources and assistance received by employers' organizations from public or private institutions), the Committee recalls that any assistance or support that an international trade union organization might provide in setting up, defending or developing national trade union organizations is a legitimate trade union activity, even when the trade union tendency does not correspond to the tendency or tendencies within the country; furthermore, trade unions (or employers' organizations) should not be required to obtain prior authorization to receive international financial assistance in their trade union or entrepreneurial activities. The Committee requests the Government to guarantee that these principles are respected when the draft legislation in question is being elaborated and that the State will not intervene in the matter of donations and resources received by employers' and workers' organizations at the national or international level. The Committee requests the Government to keep it informed in this regard.

(g) As to certain alleged restrictions to fundamental rights (the withdrawal of Canal 2, Radio Caracas Televisión's (RCTV) licence and Government threats that have led two channels to change their editorial line), the Committee recalls that the right of workers' and employers' organizations to express their opinions through the press or other social communication media is a fundamental element of freedom of association and that the authorities should abstain from unduly impeding its lawful exercise, and should fully guarantee freedom of expression in general and in particular that of employers' organizations. The Committee requests the Government to guarantee that this principle is respected, in particular with regard to the communications media used by FEDECAMARAS. The Committee also

requests the Government to refrain from all interference in the editorial line of independent communication media, including the use of economic or legal sanctions, and to guarantee through the existence of independent means of expression, the free flow of ideas, essential to the life and well-being of employers' and workers' organizations.

(h) As to the allegations of discrimination against FEDECAMARAS and its affiliated organizations, including the establishment or promotion of organizations or enterprises close to the regime such as, according to the allegations, the CESU or EMPREVEN, the Committee emphasizes the importance of ensuring that the Government adopts a neutral attitude when dealing with any workers' or employers' organizations, and requests the Government to respect the principles referred to in the conclusions.

(i) As to the allegations of: violations of the private property of several employers' leaders in the agricultural and livestock sector; victims of invasions; the confiscation of land or expropriation without fair compensation, frequently in spite of rulings made by the judicial authorities regarding the restitution of lands to their owners, the Committee requests the Government to respond precisely to the specific allegations made by the IOE, including those relating to the measures taken against employers' leaders, Mr Mario José Oropeza and Mr Luis Bernardo Meléndez, and the serious allegations regarding the abduction of three sugar producers in 2006 and the death of six producers following an assault.

(j) As to the allegations regarding limitations on employers' leaders' freedom of movement, recalling the importance that it attaches to the principle set out in the Universal Declaration of Human Rights that everyone has the right to leave any country, including his own, and to return to his country, particularly when participation in the activities of organizations of employers or workers abroad is involved, the Committee requests the Government to ensure the freedom of movement of the leaders Ms Albis Muñoz and Mr Carlos Fernández and to take the necessary steps to annul the judicial proceedings and arrest order against Mr Carlos Fernández so that he may return to the country without risk of reprisals. The Committee requests the Government to send information on the eight employers' leaders mentioned by name by the IOE whose freedom of movement is restricted, according to the allegations.

(k) As to the alleged harassment of employers' leaders through hostile speeches given by the President of the Republic in which he makes damaging remarks and disparages employers' leaders, threatening to confiscate their property on supposed grounds of social interest, the Committee requests the Government to provide its observations in this regard without delay.

(l) As to the allegations made by the IOE regarding social production enterprises with privileges bestowed upon them by the State, the Committee invites the IOE to provide new information and clarification on these allegations, and requests the Government to ensure a neutral attitude in treatment of, and relations with, all employers' organizations and their members.

(m) As to the serious allegations made by the IOE dated 25 May 2007 that a pro-governmental mob forced its way into the head office of FEDECAMARAS, daubing graffiti, damaging property and making threats, the Committee stresses the Government's obligation to ensure that employers' organizations can exercise their rights in an environment free of fear, intimidation and violence and urges the Government to undertake without further delay an investigation with a view to identifying the guilty parties and to instituting legal proceedings so that they can be duly prosecuted and punished and thereby prevent the repetition of these offences. The Committee requests the Government to ensure the security of both the FEDECAMARAS head office and its leaders from now on and to inform the Committee on the outcomes of the investigation without further delay.

(n) Finally, the Committee requests the Government to transmit its observations in respect of the allegations of the IOE dated 11 October 2007.

CASE NO. 2422

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by — the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS) supported by — Public Services International (PSI)

Allegations: (1) decision of the National Electoral Council (CNE) to suspend and withhold recognition of the SUNEP-SAS elections despite the fact that they met all legal requirements; (2) refusal of the authorities to negotiate a draft collective agreement or lists of demands with SUNEP-SAS; (3) refusal to grant trade union leave to SUNEP-SAS officials, dismissal proceedings against trade unionists and other anti-trade union measures

1326. The Committee examined this case at its meeting in May–June 2006 and presented an interim report to the Governing Body [see 342nd Report, paras 1020–1039, approved by the Governing Body at its 296th Session (June 2006)].

1327. Subsequently, the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS) presented additional information in communications dated 11 October 2006 and 2 February 2007. In its communication dated 1 December 2006, Public Services International (PSI) also sent additional information. The Government sent new observations in communications dated 3, 9, 21 May and 24 October 2007. SUNEP-SAS

presented additional information and new allegations in a communication dated 10 August 2007.

1328. 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

1329. When it last examined this case at its meeting in May–June 2006, the Committee made the following recommendations on the matters still pending [see 342nd Report, para. 1039]:

(a) Regretting the fact that the public authorities have not recognized the union elections of SUNEP-SAS in November 2004, the Committee urges the Government and the public authorities to recognize the executive committee and the union officials who won these elections, and in future to guarantee respect for the principles of non-interference by the public authorities in the trade union elections referred to in the conclusions.

(b) The Committee also requests the Government to remedy the negative consequences (denial of collective bargaining rights and of union leave for its officials) suffered by the complainant organization by the failure to recognize its elections in November 2004 and the move to prevent it from participating in discussions on the draft collective agreement presented by one federation in 2005, some years after the Ministry of Labour refused to consider the complainant organization's draft of a collective agreement in December 2002. The Committee requests the Government to ensure the participation of SUNEP-SAS in discussions on the draft collective agreement if these discussions are still in progress.

(c) The Committee requests the Government in future also to safeguard the right to collective bargaining and union leave for officials of the complainant organization, leave which had previously been refused in particular with regard to the Anzoátegui section of SUNEP-SAS.

(d) The Committee requests the Government to keep it informed of the follow-up to these recommendations, and to submit its observations concerning the new allegations made by SUNEP-SAS on 27 January 2006 in connection with the unlawful pay suspension imposed on 11 leaders of SUNEP-SAS, Miranda section.

B. New information from the complainant organizations

1330. In their communications dated 11 October and 1 December 2006, SUNEP-SAS and PSI state that the National Electoral Council recognized the validity of the SUNEP-SAS electoral process for the period 2004–08 in its decision of 26 April 2006, having failed to recognize it for more than 16 months. However, since then the attacks on the trade union have reached absurd and unlawful proportions. In particular, Ministry of Health circular No. 49 dated 19 May 2006 revoked the trade union leave of the organizations which had not signed the collective agreement (SUNEP-SAS had been deliberately excluded from the bargaining process for the agreement, despite its majority status, pending a decision by the National Electoral Council (CNE) on its electoral process). Letter No. 1615 dated 14 June 2006 from the Ministry of Health also declares the SUNEP-SAS application for trade union leave to be unjustified, thus affecting the 26 trade union sections in different states around the country. On 23 August 2006, circular No. 070, addressed to doctors and personnel managers, was issued concerning the "handover of the offices assigned to SUNEP-SAS".

1331. Furthermore, the opening of an investigation concerning Yuri Girardot Salas Moreno, organization secretary of the Capital District section and second member of the SUNEP-SAS executive committee, was announced on 7 September 2006, in proceedings for dismissal on grounds of unjustified absence and carrying out trade union activities. The Director of National Inspection and Other Collective Labour Issues of the Public Sector, in

response to SUNEP-SAS' application to reopen the discussion of the list of demands (collective bargaining), said that SUNEP-SAS' elections had been overdue since September 2001, thereby disregarding the CNE's decision.

1332. The complainants add that the pay of the officials of the Miranda section of SUNEP-SAS is still suspended and their trade union headquarters have been confiscated; dismissal proceedings have also been initiated against trade union officials Francisco Atagua, Nieves Paz, Arminda Mejías and Thamara Tovar, in disregard of the right to union leave.

1333. In its communication dated 2 February 2007, SUNEP-SAS alleges that, on 29 November 2006, trade union official Yuri Girardot Salas Moreno was notified of his dismissal despite being covered by legally recognized trade union immunity and was denied any possibility of defending himself; a decision has not yet been issued on his appeal to the Ministry of Health.

1334. Moreover, the National Labour Inspectorate has refused to recognize SUNEP-SAS' right to request and discuss lists of demands. The appeal presented to the Inspectorate on 18 January 2007 has given rise to a situation of "administrative silence", which, contrary to what happens in other countries, does not imply a favourable outcome for the worker.

C. The Government's reply

1335. In its communications dated 3, 9, 21 May and 24 October 2007, the Government reiterates its previous statements to the effect that, on 12 July 2005, through ministerial resolution No. 3903, published in *Official Gazette* No. 38228 of 14 July 2005, the labour policy meeting was convened to allow conciliatory talks between the health sector employees of the national public health administration and health-service providers, at the national level, in accordance with the draft collective labour agreement presented by the National Federation of Regional, Sectoral and Allied Trade Unions of Health Workers (FENASINTRASALUD) on 14 February 2005, which covered all workers in this sector; item (e) of section 533 of the Organic Labour Act provides for: "… notification of the suspension, as of publication, of the examination of draft collective agreements or ongoing lists of demands (whether conciliatory or disputed) to which any of the employers convened are party …". Based on the above, the Director of National Inspection and Other Collective Labour Issues of the Public Sector, through Order No. 2005-4885 of 9 August 2005, agreed to suspend the examination of the conciliatory list of demands presented by SUNEP-SAS on 25 January 2002. On 15 August 2005, through communication No. 201-05, in accordance with section 589 of the Organic Labour Act, SUNEP-SAS requested that it be allowed to participate in the discussions of the labour policy meeting. Within the period stipulated in section 540 of the Organic Labour Act (three days), the chairpersons appointed through Order No. 2005-0502 of 18 August 2005 declared the application to participate invalid, on the grounds of "overdue elections" (the term used in jurisprudence) on the part of the trade union organization. According to section 48 of the SUNEP-SAS' rules, the executive committee of the latter has a term of three years (the maximum term stipulated by law under section 434 of the Organic Labour Act). Elections to the executive committee were last held on 21 September 2001 for the period 2001–04, and thus, on the date at which the application was made, the mandate of the current executive committee had expired, more than one year having elapsed without new elections for all the union's bodies as required by its own rules.

1336. Referring to more recent events, the Government states that, on 12 May 2006, recognition agreement No. 2006-01015 was issued regarding the collective agreement discussed within the framework of a labour policy meeting (collective bargaining) between the health sector employees of the national public health administration and health-service providers, at the national level, in accordance with section 521 of the Organic Labour Act and section 143

of the relevant regulations. In response to letters Nos 116/06 and 172/06 received by the Directorate of National Inspection and Other Collective Labour Issues of the Public Sector on 8 August 2006 and 19 October 2006 respectively, through which SUNEP-SAS requests the reopening of the discussion of the conciliatory list of demands which had been presented to this Office on 25 January 2002, for discussion with the Ministry of Health, the Directorate declared the application inadmissible in the light of the entry into force of the new collective agreement discussed within the framework of a health sector labour policy meeting which will regulate labour relations for the period 2006–08.

1337. On 18 January 2007, a letter was presented to the National Labour Inspectorate, in which the complainant trade union organization appealed against Administrative Act No. 1415 of 14 June 2006, issued by the General Directorate of Human Resources of the Ministry of Health, which refused the request for full-time trade union leave for the members of its executive committee. As a result of this refusal, the trade union officials are requesting the Directorate of the National Labour Inspectorate to grant the trade union immunity enshrined in section 449 of the Organic Labour Act, also citing clause 3 of the Fourth Collective Labour Agreement signed by the Ministry of Health and SUNEP-SAS. It should be pointed out at the outset that the Directorate is not the competent body to hear appeals for annulment lodged against administrative acts issued by any body of the public administration, given that the purpose of such appeals is to obtain review of a decision by a body which is higher than the one which issued that decision and which acts as a real control mechanism over the body that originally issued the decision. The process of review, in itself, is the function of a higher body than that which issued the decision and therefore the appeal lodged by SUNEP-SAS must be declared inadmissible.

1338. As to the request for trade union immunity, and fully in accordance with the terms of section 449 of the Organic Labour Act, it is clear that there is a contradiction with regard to the trade union organization's application, given that the protection against dismissal referred to is a mandatory provision stipulated by law for the members of the executive committee of a trade union organization. This administrative body cannot simply ignore a provision, and especially protection granted by law, as this would constitute a blatant violation of the legal and constitutional provisions laid down to this effect, which must be guaranteed by the authorities, as an integral part of the labour administration system.

1339. Moreover, a request was also made for full-time paid trade union leave to be granted for the entire executive committee, invoking the terms of clause 3 of the Fourth Collective Labour Agreement signed by the Ministry of Health and SUNEP-SAS. Firstly, it should be pointed out that the power to grant trade union leave is conferred by collective agreement or by a separate agreement between the social partners, where there is no collective agreement in place to regulate labour relations in the institution or enterprise. Furthermore, this type of leave is only granted by the employer, and the conditions under which this is done are set out in the collective labour agreement. Therefore, it is not for the Ministry of Labour and Social Security to grant leave, because it is not in its remit to do so. Rather, the granting of trade union leave is the prerogative of the employer, following a request made by the trade union organization.

1340. Another important point is that trade union leave is covered by the trade union clauses of a collective agreement, and leave can only be granted once it has been determined which trade union (or unions) administers the agreement. In the case in question, the trade union organization refers to a contractual clause of a collective agreement that lost its validity with the recognition of the labour policy meeting between the health-sector employees of the national public health administration and health-service providers at the national level. Furthermore, the facts recalled above clearly show that SUNEP-SAS is not the trade union organization that administers the collective agreement in force because its application to participate was declared invalid, on the grounds of "overdue elections", which meant that

the employer, in this case the Ministry of Health, was obliged to refuse the full-time paid leave requested by the trade union.

1341. The Government adds that, on 20 October 2006, in response to the communications and annexes presented to the Directorate of National Inspection and Other Collective Labour Issues of the Public Sector, including *Electoral Gazette* No. 306 of 11 May 2006, the Directorate recognized the electoral process held by the trade union organization on 30 November 2004. The trade union organization was notified of this decision on 24 October 2006.

1342. With regard to the case of Yuri Girardot Salas Moreno, this citizen is listed as an employee on the payroll, in other words, he is a public servant: "… public servants have a statutory, rather than a contractual, relationship with the administration. From the time of their appointment until the professional relationship has expired, public servants are covered by public statutes, which at all times determine what their rights, duties and responsibilities shall be". Section 8 of the Organic Labour Act states that: "In all matters relating to recruitment, promotion, transfer, suspension, retirement, systems of remuneration, security of employment and jurisdictional status, national, state or municipal officials and employees shall be governed by the corresponding administrative career regulations. In any matter not so regulated they shall enjoy the benefits accorded by the present Act … ." As published in *Official Gazette* No. 37522 of 6 September 2002, within the national legal system, Chapter III of the Law on the Statute of the Civil Service establishes the entire disciplinary dismissal procedure, preserving the right to a defence and due process. The trade union organization failed to refer to this entire process (from the beginning) in its annexes, only including the notification ending the process, in a clear attempt to manipulate the facts.

D. The Committee's conclusions

1343. *The Committee observes that the pending allegations in this case concern the CNE's failure to recognize the SUNEP-SAS trade union elections and the ensuing consequences: refusal to grant trade union leave, exclusion of SUNEP-SAS from collective bargaining in the health sector (with the conclusion of a new collective agreement in which SUNEP-SAS could not participate, despite being the sector's majority trade union organization); and failure to recognize its right to present lists of demands. According to the allegations, the pay of 11 members of the SUNEP-SAS executive committee of the Miranda section has also been illegally suspended, the question of handing over (returning) the offices assigned to SUNEP-SAS is being raised, the offices of the trade union headquarters of the Miranda section have been confiscated, Mr Yuri Girardot Salas Moreno, organization secretary of the Capital District section and second member of the SUNEP-SAS executive committee, has been unlawfully dismissed (an appeal for review is still pending before the Ministry of Health) and dismissal proceedings have been initiated against trade union officials Francisco Atagua, Nieves Paz, Arminda Mejías and Thamara Tovar.*

1344. *The Committee notes the Government's statements to the effect that: (1) on 20 October 2006, the Directorate of National Inspection and Other Collective Labour Issues of the Public Sector recognized the electoral process held by the trade union organization in November 2004; (2) the full-time trade union leave for officials of the complainant organization (SUNEP-SAS) was not granted by the Ministry of Health and the appeal lodged by the complainant organization with the Directorate of the National Labour Inspectorate (Ministry of Labour and Social Security) was declared inadmissible as the Directorate is not competent to hear appeals against administrative acts (the appeal should have been lodged with a higher body than that which issued the decision); (3) the trade union immunity (protection from dismissal) of trade union officials arises from a mandatory provision of the Organic Labour Act and the authorities must therefore ensure*

compliance with this provision; (4) trade union leave is granted under collective agreements or by agreement between the social partners, and not by the Ministry of Labour and Social Security; the complainant organization does not currently administer the collective agreement in the health sector (its application to participate in the discussion of the collective agreement was declared invalid, on the grounds of "overdue elections"); (5) in the case of Mr Yuri Girardot Salas Moreno, there was an attempt to manipulate the facts, as the complainant trade union organization only submitted the notification of dismissal but omitted the rest of the procedure, which preserves the right to a defence and due process (the Government sends documents on the procedure – including evidence, charges and defence – thus demonstrating that the right to a defence was respected, but has not sent the dismissal ruling indicating the grounds for that decision).

1345. *The Committee notes that the complainant organizations state that the CNE finally recognized the SUNEP-SAS trade union elections (held in November 2004) over 16 months after they took place, and that the Government confirms that it recognized the electoral process in October 2006. However, in addition to deploring this unnecessary delay, the Committee is bound to express concern at the fact that, despite being the most representative organization in the health sector, because of this delay, SUNEP-SAS was excluded from the bargaining process for the collective agreement (carried out in November 2004) so that now, on the grounds that this trade union did not sign the collective agreement, the Ministry of Health authorities do not recognize trade union leave for its officials, are confiscating its trade union premises (Miranda section) or considering confiscating those of other sections, and they do not recognize its right to present lists of demands; SUNEP-SAS states further that 11 officials of the Miranda section have had their pay illegally suspended, trade union official Yuri Girardot Salas Moreno has been dismissed (an appeal has been lodged against this decision before the Ministry of Health), and dismissal proceedings have been initiated against trade union officials Francisco Atagua, Nieves Paz, Arminda Mejías and Thamara Tovar.*

1346. *The Committee emphasizes the seriousness of the new allegations and observes that the Government refers specifically to the alleged refusal to grant trade union leave and to the case involving the dismissal of trade union official Yuri Girardot Salas Moreno, although it has not sent complete documentation regarding his dismissal proceedings (in particular, the administrative decision on the dismissal and the outcome of the appeal for review that he filed with the Ministry of Health), but makes no reference to the allegations relating to the pay suspension imposed on 11 trade union officials, confiscation of trade union premises and the dismissal proceedings initiated against three SUNEP-SAS trade union officials. The Committee stresses that the content of these allegations suggests acts of favouritism on the part of the authorities towards other organizations and treatment prejudicial to the complainant trade union, and reminds the Government that the authorities should refrain from discrimination and should not favour one trade union organization to the detriment of another. The Committee reminds the Government that both the authorities and employers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 343]. The Committee urges the Government to put an end to the acts of discrimination against SUNEP-SAS and its officials, to guarantee its rights to trade union leave and to collective bargaining and to ensure that its trade union premises are not confiscated and that its officials are not dismissed for reasons relating to the exercise of their trade union rights (for example, the Committee draws attention to the fact that the charges brought against trade union official Yuri Girardot Salas Moreno include that of abandoning his duties and that the trade union points out that its officials are denied trade union leave). The Committee asks to be kept informed in this regard. The Committee requests the Government to send the decision on the dismissal of trade union official Yuri Girardot Salas Moreno, specifying the grounds*

for dismissal, and the outcome of the appeal for review lodged with the Ministry of Health, so that it can examine the allegations in full knowledge of the facts.

1347. *The Committee requests the Government to send its observations on the additional information and new allegations presented by SUNEP-SAS in a communication dated 10 August 2007.*

The Committee's recommendations

1348. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee emphasizes the seriousness of the allegations and urges the Government to put an end to the acts of discrimination against SUNEP-SAS and its officials, to guarantee its rights to trade union leave and to collective bargaining and to ensure that its trade union premises are not confiscated and that its officials are not dismissed or prejudiced for reasons relating to the exercise of their trade union rights (trade union official Yuri Giradot Salas Moreno has been dismissed; dismissal proceedings are currently under way against trade union officials Francisco Atagua, Nieves Paz, Arminda Mejías and Thamara Tovar; and the pay of 11 officials of the Miranda section of the complainant trade union has been illegally suspended). The Committee asks the Government to keep it informed in this regard.

(b) The Committee requests the Government to send the decision on the dismissal of trade union official Yuri Girardot Salas Moreno, specifying the grounds for dismissal, and the outcome of the appeal for review lodged with the Ministry of Health, so that it can examine the case while in full knowledge of the facts.

(c) The Committee requests the Government to send its observations on the additional information and new allegations presented by SUNEP-SAS in a communication dated 10 August 2007.

Geneva, 9 November 2007. *(Signed)* Professor Paul van der Heijden, Chairperson.

Points for decision: