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FOURTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

372nd Report of the Committee on Freedom of Association

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Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 24–26 May 2014, under the chairmanship of Professor Paul van der Heijden.
2. The members of Colombian and Japanese nationality were not present during the examination of the cases relating to Colombia (Cases Nos 2924 and 2954) and Japan (Cases Nos 2177 and 2183).

* * *

3. Currently, there are 134 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 29 cases on the merits, reaching definitive conclusions in 13 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), 2254 (Bolivarian Republic of Venezuela) and 2923 (El Salvador) because of the extreme seriousness and urgency of the matters dealt with therein.

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

5. The Committee deeply regrets that it was obliged to examine the following cases without a response from the Government: El Salvador (Cases Nos 2871, 2896, 2923, 3007, 3008, 3013), Guatemala (Cases Nos 2967, 2989), and Pakistan (Case No. 3018).

Urgent appeals

6. As regards Cases Nos 2318 (Cambodia), 2723 (Fiji), 2786 (Dominican Republic), 2794 (Kiribati), 2902 (Pakistan), 2949 (Swaziland), 2957 (El Salvador), 2978 (Guatemala), 3012 (El Salvador), 3019 (Paraguay), 3030 (Mali), 3035 (Guatemala), 3040 (Guatemala), 3041 (Cameroon), 3042 (Guatemala) and 3044 (Croatia), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

New cases

7. The Committee adjourned until its next meeting the examination of the following cases: 3064 (Cambodia), 3065 (Peru), 3066 (Peru), 3067 (Democratic Republic of Congo), 3068 (Dominican Republic), 3069 (Peru), 3070 (Benin), 3071 (Dominican Republic) and 3072 (Portugal), 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

8. The Committee is still awaiting observations or information from the governments concerned in the following cases: 2203 (Guatemala), 2620 (Republic of Korea), 2655 (Cambodia), 2882 (Bahrain), 2937 (Paraguay), 2960 (Colombia), 2982 (Peru), 2987 (Argentina), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3047 (Republic of Korea), 3049 (Panama), 3053 (Chile), 3054 (El Salvador), 3057 (Canada), 3061 (Colombia), 3062 (Guatemala) and 3063 (Colombia).

Partial information received from governments

9. In Cases Nos 2265 (Switzerland), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2673 (Guatemala), 2708 (Guatemala), 2743 (Argentina), 2761 (Colombia), 2811 (Guatemala), 2817 (Argentina), 2824 (Colombia), 2830 (Colombia), 2889 (Pakistan), 2897 (El Salvador), 2927 (Guatemala), 2948 (Guatemala), 2962 (India), 2970 (Ecuador), 2994 (Tunisia), 2996 (Peru), 2997 (Argentina), 3003 (Canada), 3009 (Peru), 3017 (Chile), 3023 (Switzerland), 3045 (Nicaragua), 3055 (Panama) and 3059 (Bolivarian Republic of Venezuela), 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

10. As regards Cases Nos 2445 (Guatemala), 2893 (El Salvador), 2917 (Bolivarian Republic of Venezuela), 2941 (Peru), 2946 (Colombia), 2955 (Bolivarian Republic of Venezuela), 2958 (Colombia), 2968 (Bolivarian Republic of Venezuela), 2995 (Colombia), 2998 (Peru), 3000 (Chile), 3002 (Plurinational State of Bolivia), 3005 (Chile), 3014 (Montenegro), 3015 (Canada), 3016 (Bolivarian Republic of Venezuela), 3020 (Colombia), 3021 (Turkey), 3026 (Peru), 3027 (Colombia), 3029 (Plurinational State of Bolivia), 3032 (Honduras), 3034 (Colombia), 3036 (Bolivarian Republic of Venezuela), 3039 (Denmark), 3043 (Peru), 3046 (Argentina), 3048 (Panama), 3050 (Indonesia), 3051 (Japan), 3052 (Mauritius), 3056 (Peru), 3058 (Djibouti) and 3060 (Mexico), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Withdrawal of a complaint

11. By a communication dated 22 May 2014, the Argentinian Building Workers' Union (UOCRA) has indicated that the circumstances giving rise to its complaint no longer prevail and therefore requests that its complaint against the Government of Argentina (Case No. 2726) be withdrawn. The Committee takes due note of this communication and considers the complaint to be effectively withdrawn.

Article 26 complaint

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

Transmission of cases to the Committee of Experts

13. The Committee draws the legislative aspect of the following Cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Ecuador (Case No. 2684), El Salvador (Case No. 3013) and Honduras (Case No. 2990).

Committee's review of its impact, visibility and working methods

14. With the objective of ensuring the sustainability and effectiveness of the work of the Committee, the Committee wishes to recall the numerous discussions it has held over the last two years on its procedures and working methods, culminating in the observations set out in paragraphs 14–22 of its 371st Report. The Committee trusts that the suggestions it has made therein will give rise to a more efficient use of its special complaints machinery by the governments and social partners and that all parties will play their part in the development and utilization of independent, impartial and rapid appeal mechanisms that elicit the confidence of the parties and can facilitate, where possible, domestic solutions. The Committee commends these observations to the Governing Body as constituted from time to time and to future members of the Committee.

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

Case No. 2812 (Cameroon)

15. At its last examination of the case, at its October 2013 meeting [see 370th Report, paras 22–26], the Committee had requested the Government to take all necessary measures to grant the Confederation of Public Sector Unions (CSP) legal existence in order to enable it to represent its members and exercise all attendant rights. The Committee also requested information on the situation of the seven trade union members who were arrested during the sit-in on 11 November 2010 and whose case had been referred to the Court of First Instance of Mfoundi (Yaoundé administrative section), in particular all judicial decisions issued in this regard, and all enquiries made into the allegations of police violence against trade union members on strike, and concerning the conditions under which the trade unions officials were detained and the ill-treatment to which they were subjected. Lastly, the Committee had requested the Government to keep it informed of any developments concerning the adoption of the single Act on trade unions.
16. In a communication dated 3 January 2014, the Government indicates that the case of the seven trade union members arrested in November 2010 following a sit-in is still pending before the courts and it assures the Committee that the rights of these union members will be respected. The Government also refers to the expectation that the adoption of the single Act on trade unions will bring an end to the rift between public and private sector trade unions.

17. *The Committee takes note of the Government's brief communication. It notes with regret that the Government makes no mention of the measures requested to grant the CSP legal existence. The Committee recalls that this legal existence is necessary in order to enable the trade union confederation to represent its members and exercise all attendant rights and expects the Government to take measures to this end without further delay.*
18. *Moreover, regarding the seven trade union members arrested in November 2010 following a sit-in, the Committee notes with concern that the case is still pending before the courts. The Committee is bound to remind the Government that any further delay of justice could result in a denial of justice and also hinder the exercise of trade union activities by the persons concerned (namely, Mr Bikoko, Jean-Marc, President of the CSP; Mr Phouet Foé, Maurice, General Secretary of SNAEF; Mr Mbassi Ondoa, Thobie, Director-General of FECASE; Mr Nla'a, Eric, Accountant of the CSP; Mr Ze, Joseph, General Secretary of SNUIPEN; Mr Felein Clause, Charles, a member of SNUIPEN; and Mr Nkili, Effoa, a member of SNUIPEN). The Committee expects the Government to report without delay on the judicial decisions issued in relation to this case. Regarding the allegations of police violence against trade union members on strike and of poor detention conditions, the Government had previously indicated that the judiciary operates transparently and independently. The Committee requests the Government to report on the judicial findings in this regard.*
19. *Lastly, the Committee strongly urges the Government to expedite the procedure for the adoption of the single Act on trade unions and to report on progress made in this regard.*

Case No. 1787 (Colombia)

20. The Committee last examined this case, which concerns murders and other acts of violence against trade union leaders and trade unionists, as well as anti-union dismissals, at its March 2012 meeting [see 363rd Report, March 2012, paras 22–32]. On that occasion, the Committee: (i) urged the Government to continue to take measures to combat impunity in consultation with workers' and employers' organizations; (ii) requested the Government to provide information on the legal status of the investigations via a list following the chronological order of the cases of violence; (iii) reiterated its previous recommendation regarding the establishment by the Government and the social partners of criteria for compiling the information to be transmitted to the investigating bodies on a tripartite basis, and requested the Government to keep it informed in that respect; (iv) again requested the complainant organizations to submit to the competent judicial authorities any information that might help advance the investigations; and (v) with regard to the allegations concerning the plan known as "Operation Dragon", whose purpose was said to be the elimination of a number of union leaders, it invited the complainant organizations to submit comments in relation to the Government's declarations in response to the ruling handed down by the Office of the Attorney-General shelving the case.
21. The Government sent information in communications dated May, August and November 2012 and March and September 2013. In a communication dated May 2012, the Government indicates that significant progress has been made in the investigations into the murders and other acts of violence examined in the context of the complaint, highlighting the following results: 1,504 cases have been assigned; 1,001 are active; 618 are at the preliminary inquiry stage; 336 are in the pre-trial and investigation stage; and there have been 464 convictions with 594 persons convicted. The Government also submits a table containing detailed information about the 1,210 cases of murder and violence examined in the context of the complaint and includes a study conducted by the Office of the Public Prosecutor in 2011 on the rulings issued from 2000 to 2011 by the Colombian justice system in this respect. In a communication received on 30 September 2013 in the framework of Case No. 2761 currently before the Committee on Freedom of Association,

the Government provides aggregate statistics on the investigations into all the cases of murder and other acts of violence against union leaders and trade unionists (including both the cases examined by the Committee in the context of the current case and those examined in the framework of Case No. 2761) with a cut-off date of June 2013, highlighting the following results: 1,542 cases have been assigned; 312 persons have been accused; 190 cases are at the trial stage; and 579 convictions have been handed down with 599 persons convicted (533 in respect of murder cases).

22. In addition, the Government indicates that the Inter-institutional Commission for the Promotion and Protection of Workers' Human Rights has been reactivated; the aim of this tripartite labour mechanism continues to be to discuss trade unions' concerns and observations with respect to the handling of investigations into cases of anti-union violence. The Government provides information about the meetings held by the Commission on 31 August 2012 and 6 March 2013, in the presence of representatives of the Ministry of Labour, the Ministry of Justice, the Ministry of the Interior, the Office of the Public Prosecutor and the social partners. The Government indicates that the Commission in question has included on its agenda the unification of criteria for compiling the information to be transmitted to the investigating bodies on a tripartite basis with the aim of building consensus in that area. Furthermore, the Government indicates that the Office of the Public Prosecutor has issued Directive No. 001 of 4 October 2012 "establishing criteria for setting priorities among the various incidents and cases filed and introducing a new criminal investigation and management system in the Office of the Public Prosecutor". As part of the implementation of this policy, the Analysis and Context Unit was established with the aim of coordinating the information currently available in the various units of the Office of the Public Prosecutor. The priority of this Unit, which consists of a team of five prosecutors, six analysts and four investigators, is the problem of violence committed against trade unionists.
23. *The Committee recalls that this case concerns more than 1,580 cases of murders of Colombian trade union leaders and trade unionists and acts of violence that occurred between the submission of the complaint in 1994 and June 2009. The Committee is compelled to reiterate strongly its indignation and its condemnation of these crimes and recalls that at some point, such as in the early 1990s, there were up to 250 murders a year. The Committee also wishes to recall that the main objective of the follow-up on this case, having already examined its substance on repeated occasions, is to put an end to impunity in each of the cases submitted to it.*
24. *The Committee takes note of the information provided by the Government and, in particular, of the statistics relating to the progress made in, and results of, the investigations into murders and other acts of violence against trade union leaders and trade unionists examined in the framework of this case. While welcoming the significant progress made between 2010 and June 2013, particularly in the number of criminal convictions handed down and persons convicted, the Committee observes that these results are still far from allowing the Committee to conclude that more than 1,500 murders and acts of violence examined by the Committee in this case have been resolved and led to convictions. Further, the Committee also notes that according to the information contained in the study conducted by the Office of the Public Prosecutor on the rulings issued from 2000 to 2011 by the Colombian justice system in respect of crimes against trade unionists, "only in a very small percentage of cases were the persons convicted who incited, convinced, persuaded or ordered others to carry out the activity in question (7.3 per cent)". The Committee therefore urges the Government, in consultation with the workers' and employers' organizations, to continue to take all necessary measures to combat impunity and to identify both the perpetrators and instigators of all the murders and acts of violence examined in this case. The Committee requests the Government to keep it informed with regard to the actions taken and the results obtained in this respect.*

25. *The Committee notes with interest the reactivation of the Inter-institutional Commission for the Promotion and Protection of Workers' Human Rights. The Committee considers that this tripartite forum can play a key role in facilitating the exchange of information necessary for the investigations to advance and to determine any adjustments necessary to achieve their completion. The Committee therefore requests the Government to keep it informed about the Commission's meetings and the results of its work, particularly with respect to the establishment by the Government and the social partners of criteria for compiling the information to be transmitted to the investigating bodies on a tripartite basis. The Committee also takes note of the establishment of the Analysis and Context Unit, with the aim of coordinating the information currently available in the various units of the Office of the Public Prosecutor and welcomes the fact that the priority of this Unit is the problem of violence committed against trade unionists. The Committee expects that the work of this Unit will continue to be attributed with the necessary resources so that it can fulfil its task of considerably contributing to the identification and punishment of the perpetrators and instigators of all the murders and acts of violence examined in this case.*

Case No. 2384 (Colombia)

26. The Committee last examined this case at its November 2011 meeting [see 354th Report, paras 63–66] and on that occasion requested the Government, with respect to the alleged anti-union dismissal of trade union leader Mr Libardo Pearson Beleño by the Public Services Enterprise of Cartagena, to keep it informed of the outcome of the appeal lodged by the trade union leader against the decision of first instance, which had rejected his claims.
27. In a communication dated 29 April 2013, the Government informs the Committee that with respect to the legal proceedings lodged by Mr Pearson Beleño there had been no developments since the decision of first instance handed down on 26 October 2007.
28. *The Committee notes with regret that more than six years after the decision of first instance, there have been no developments regarding the outcome of the appeal lodged by Mr Pearson Beleño in respect of his dismissal. Recalling that “justice delayed is justice denied” [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 105], the Committee expects that the appeal ruling in respect of the dismissal of Mr Pearson Beleño will be handed down as soon as possible and requests the Government to keep it informed in this respect.*

Case No. 2450 (Djibouti)

29. The Committee last examined this case at its October 2013 meeting [see 370th Report, paras 40–44], when it requested the Government: to keep it informed of the progress of the negotiations concerning the forthcoming reinstatement of Ms Mariam Hassan Ali and Mr Habib Ahmed Doualeh, and of the actual payment of the retirement pension of Mr Kamil Dinareh Hared, also covering the gap in annuities; to state whether any judicial appeal was lodged against the administrative decision to dismiss Mr Hassan Cher Hared; and to keep the Committee regularly informed of the progress of the proceedings brought against Mr Hassan Cher Hared, Mr Adan Mohamed Abdou, Mr Mohamed Ahmed Mohamed and Mr Djibril Ismael Egueh for “delivering information to a foreign power”.
30. In a communication dated 13 February 2014, the Government indicates that a draft decree is being developed to provide a standard pension for all workers dismissed in 1995 who have not been reinstated and have reached retirement age, and a survivor pension for the rights holders. This measure would apply to Mr Kamil Dinareh Hared. *The Committee requests the Government to keep it informed of the adoption of the decree in question and*

of the allocation of the pension to Mr Kamil Dinareh Hared, and to the other eligible workers. The Committee welcomes the steps taken by the Government to settle this issue once and for all, and accordingly expects a timely resolution.

31. *In this regard, the Committee notes with interest the reinstatement of Ms Mariam Hassan Ali to the Ministry of National Education and expects the Government to inform it of the reinstatement of Mr Habib Ahmed Doualeh and Mr Abdoufatah Hassan in the very near future, as it undertakes to do.*
32. *Moreover, the Committee takes note of the Government's commitment to keep it informed of all judicial appeals concerning the administrative decision to dismiss Mr Hassan Cher Hared and of the progress of the proceedings filed in 2006 against Mr Hassan Cher Hared, Mr Adan Mohamed Abdou, Mr Mohamed Ahmed Mohamed and Mr Djibril Ismael Egueh for "delivering information to a foreign power". On this last point, the Committee recalls that excessive delays in the proceedings may have an intimidating effect on the union officials concerned, thus having repercussions on the exercise of their activities. The Committee expects the Government to provide additional information without delay regarding the aforementioned issues, which have been pending for many years.*

Case No. 2914 (Gabon)

33. This case was examined by the Committee at its June 2013 meeting. It concerns allegations of anti-union discrimination against members of the TELECEL Employees' Free Trade Union (SYLET), in particular the dismissal of seven trade union officials and acts of interference by the employer [see 368th Report, paras 380–410]. In its recommendations, the Committee requested the Government: (a) to take the necessary steps, particularly through the inspection services, to investigate the serious allegations of anti-union acts and to keep it informed of the outcome; (b) to indicate whether the seven SYLET executive committee members who were dismissed by the MOOV–GABON company have been reinstated as required by the decision of the Directorate-General of Labour in October 2011 and upheld by a ministerial decision of January 2012; and (c) to indicate the extent to which effect has been given to the agreements reached in September 2010 between SYLET and the enterprise as a result of the conciliation procedure.
34. In a communication of 31 December 2013, the Government states that an investigation into the allegations of anti-union acts against SYLET members was conducted and found the allegations to be true. An official letter was sent to the enterprise, ordering it to put an end to the practices that had been noted. With regard to the reinstatement of the seven SYLET executive committee members, the enterprise indicated that that is not possible, on the grounds of a breach of trust. Lastly, the Government states, in relation to the September 2010 agreements, that the "car plan policy" was being implemented, with loan agreements signed with banks to enable employees to take out loans to purchase a vehicle, property or small appliances.
35. *The Committee takes due note of the information provided by the Government and welcomes the measures taken to implement its recommendations. As for the MOOV–GABON company's failure to reinstate the seven SYLET executive committee members on the grounds of a breach of trust, the Committee requests the Government to inform it of the outcome. In this respect, the Committee recalls its previous recommendations in which it stated that if reinstatement is not possible, the necessary measures must be taken to ensure that appropriate compensation is paid, such as to constitute an adequate deterrent against acts of anti-union discrimination. The Committee observes that the administration concluded that there was anti-union discrimination in this case.*

Case No. 2341 (Guatemala)

36. The Committee last examined this case at its March 2011 meeting [see 359th Report, paras 545–560], when it made the following recommendation:

The Committee deeply deplores finding itself obliged, in view of the lack of response from the Government, to reiterate its previous recommendations on certain allegations and urges the Government to reply without delay:

- With respect to the dismissal of 18 employees from the municipality of Comitancillo (San Marcos), the Committee deplores the long delay that has occurred owing to the various procedures and appeals, and recalls that justice delayed is justice denied. It asks the Government to send the ruling handed down in this matter by the Fourth Court of Labour and Social Welfare, and to inform it whether the abovementioned workers have been reinstated following the decision of the Constitutional Court dated 14 November 2006.
- With regard to the alleged interference by the enterprise Portuaria Quetzal in the extraordinary general assembly of the Portuaria Quetzal Trade Union, during which trade union leaders were removed from their position in the absence of a quorum, the Committee requests the Government to keep it informed of any administrative or judicial decision taken on this issue, particularly with regard to the fact that the decisions of the trade union assembly were challenged by 13 of the 600 members.

37. In addition, at the same meeting [see 359th Report, para. 646], the Committee decided, in the framework of Case No. 2609, that the alleged violations of the exercise of freedom of association and collective bargaining in the Quetzal port enterprise, including the dismissal of a considerable number of workers following the creation of the Union of Dockers and Workers involved in Related Activities in Quetzal Port (SIGRETEACOPQ) would thereafter be examined under Case No. 2341. In this regard, the Committee made the following recommendation: “... the Committee requests the Government to keep it informed of the outcome of the cases that are still awaiting a decision and to send it a copy of the rulings when they are handed down”.

38. In a communication dated 9 November 2011, the Government submitted a copy of the information provided by the judiciary on the status of the judicial proceedings related to the collective disputes and the dismissals in the Quetzal port enterprise and in cargo handling enterprises. The information indicates that, of the five collective disputes submitted to the courts, two have been closed; in two other cases the proceedings are under way; in the fifth case, although the proceedings are under way, the defendant has not been notified and the complainant has not pursued any follow-up action. Regarding the judicial requests for reinstatement due to the dismissal of numerous workers following the creation of SIGRETEACOPQ, it appears that: (i) in seven of the cases the requests for reinstatement were not admitted and the proceedings have been closed; (ii) in nine cases in which an appeal had been lodged against the judicial reinstatement ruling, the court of appeal or, where applicable, the Constitutional Court, overturned the reinstatement ruling; (iii) in 59 cases in which reinstatement rulings were handed down at first instance, but were not implemented by the enterprise, the workers have not taken the necessary follow-up action; and (iv) in six cases the judicial proceedings are pending a final decision.

39. *The Committee takes note of this information. It observes that the Government has only submitted the raw information on the proceedings transmitted by the judiciary, without providing an explanation or sending a copy of the aforementioned rulings as requested by the Committee. The Committee therefore again requests the Government to submit a copy of the rulings referred to in its communication. The Committee also notes that in the many cases (59) in which the judicial reinstatement rulings handed down at first instance have not been appealed, the rulings have not been implemented and the workers have failed to take any action to remedy this non-compliance. Recalling that under the Memorandum of*

Understanding signed with the Workers' group of the Governing Body of the ILO on 26 March 2013 as a result of the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), presented under article 26 of the Constitution of the ILO, the Government undertook to develop "[p]olicies and practices to ensure the application of labour legislation, including [...] efficient, timely and effective judicial procedures", the Committee requests the Government to provide detailed information on the reasons for non-compliance with the reinstatement rulings against which no appeals have been lodged.

40. *The Committee notes that, six years after the events which are the subject of this complaint against the Quetzal port enterprise and cargo handling enterprises, various proceedings concerning the collective disputes filed before the courts and various proceedings filed by the dismissed workers are still pending a final ruling. Recalling that "justice delayed is justice denied" [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 105], the Committee expects that the pending rulings will be handed down as soon as possible and requests the Government to keep it informed in this regard.*
41. *Regarding the dismissal of 18 workers from the municipality of Comitancillo (San Marcos), the Committee regrets to note that the Government has still not sent any information. The Committee again urges the Government to keep it informed of the ruling handed down in this matter by the Fourth Court of Labour and Social Welfare, and to inform it whether the workers have been reinstated following the decision of the Constitutional Court dated 14 November 2006.*
42. *With regard to the alleged interference by the Quetzal port enterprise in the extraordinary general assembly of the Quetzal port enterprise trade union, during which trade union leaders were removed from their positions in the absence of a quorum, the Committee regrets to note that the Government has still not submitted any information. The Committee again urges the Government to keep it informed of any administrative or judicial decisions handed down in this regard, particularly with regard to the appeals lodged by 13 of the 600 members against the decisions of the trade union assembly.*

* * *

43. 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
1865 (Republic of Korea)	March 2009	March 2014
1962 (Colombia)	November 2002	June 2008
2096 (Pakistan)	March 2004	March 2011
2153 (Algeria)	March 2005	November 2012
2173 (Canada)	March 2003	June 2010
2228 (India)	November 2004	March 2014
2304 (Japan)	November 2004	October 2013
2382 (Cameroon)	November 2005	March 2014
2428 (Bolivarian Republic of Venezuela)	March 2006	October 2013
2512 (India)	November 2007	March 2014
2516 (Ethiopia)	March 2014	–

Case	Last examination on the merits	Last follow-up examination
2547 (United States)	June 2008	March 2014
2583 (Colombia)	June 2008	March 2010
2654 (Canada)	March 2010	March 2014
2700 (Guatemala)	March 2010	March 2011
2713 (Democratic Republic of Congo)	March 2014	–
2716 (Philippines)	November 2010	–
2749 (France)	March 2014	–
2750 (France)	November 2011	March 2014
2752 (Montenegro)	March 2012	March 2014
2755 (Ecuador)	June 2010	March 2011
2772 (Cameroon)	June 2011	March 2014
2797 (Democratic Republic of Congo)	March 2014	–
2807 (Islamic Republic of Iran)	March 2014	–
2820 (Greece)	November 2012	–
2836 (El Salvador)	November 2011	March 2013
2844 (Japan)	June 2012	October 2013
2852 (Colombia)	November 2012	–
2854 (Peru)	March 2012	March 2014
2870 (Argentina)	November 2012	–
2872 (Guatemala)	November 2011	–
2890 (Ukraine)	March 2013	March 2014
2895 (Colombia)	March 2013	–
2900 (Peru)	October 2013	March 2014
2908 (El Salvador)	March 2014	–
2915 (Peru)	March 2013	March 2014
2925 (Democratic Republic of Congo)	March 2014	–
2928 (Ecuador)	March 2014	–
2934 (Peru)	November 2012	–
2947 (Spain)	March 2014	–
2953 (Italy)	March 2014	–
2964 (Pakistan)	June 2013	–
2973 (Mexico)	October 2013	–
2979 (Argentina)	March 2014	–
2980 (El Salvador)	June 2013	–
2988 (Qatar)	March 2014	–
2999 (Peru)	March 2014	–
3001 (Plurinational State of Bolivia)	March 2014	–
3033 (Peru)	March 2014	–
3037 (Philippines)	March 2014	–

44. The Committee hopes these governments will quickly provide the information requested.

45. In addition, the Committee has received information concerning the follow-up of Cases Nos 2086 (Paraguay), 2225 (Bosnia and Herzegovina), 2291 (Poland), 2400 (Peru), 2430 (Canada), 2434 (Colombia), 2453 (Iraq), 2460 (United States), 2478 (Mexico), 2488 (Philippines), 2533 (Peru), 2540 (Guatemala), 2602 (Republic of Korea), 2611 (Romania), 2616 (Mauritius), 2637 (Malaysia), 2656 (Brazil), 2667 (Peru), 2678 (Georgia), 2679 (Mexico), 2694 (Mexico), 2699 (Uruguay), 2706 (Panama), 2710 (Colombia), 2719 (Colombia), 2725 (Argentina), 2741 (United States), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2775 (Hungary), 2777 (Hungary), 2780 (Ireland), 2788 (Argentina), 2789 (Turkey), 2793 (Colombia), 2808 (Cameroon), 2815 (Philippines), 2816 (Peru), 2827 (Bolivarian Republic of Venezuela), 2833 (Peru), 2837 (Argentina), 2838 (Greece), 2840 (Guatemala), 2843 (Ukraine), 2850 (Malaysia), 2854 (Peru), 2856 (Peru), 2860 (Sri Lanka), 2892 (Turkey), 2905 (Netherlands), 2907 (Lithuania), 2916 (Nicaragua), 2944 (Algeria), 2952 (Lebanon), 2966 (Peru), 2969 (Mauritius), 2972 (Poland), 2976 (Turkey), 2977 (Jordan), 2981 (Mexico), 2991 (India), 2992 (Costa Rica) and 3006 (Bolivarian Republic of Venezuela), which it will examine at its next meeting.

CASE No. 2765

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

**Complaint against the Government of Bangladesh
presented by
the Bangladesh Cha-Sramik Union (BCSU)**

Allegations: The complainant alleges interference by the authorities in the election of officers to its Central Executive Committee, as well as the violent suppression of demonstrations organized to protest this interference

46. The Committee last examined this case at its June 2013 meeting, when it presented an interim report to the Governing Body [see 368th Report, approved by the Governing Body at its 318th Session (June 2013), paras 190–201].
47. The Government sent its observations in a communication dated 22 May 2014.
48. Bangladesh has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

49. In its previous examination of the case, the Committee made the following recommendations [see 368th Report, para. 201]:

- (a) The Committee expects that the Government will take measures to recognize the elected Central Executive Committee (Makhon Lal Karmaker – Ramjovan Koiry's panel) without delay and will ensure that it is able to effectively exercise its functions pending any decision by the judicial authorities, and requests to be kept informed in this respect.
- (b) The Committee firmly trusts that the Labour Court will hand down its decision on the abovementioned case without delay, and once again requests the Government to provide, as soon as they are handed down, a copy of the rulings of the Labour Court, as well as of the High Court Division and Appellate Division of the Supreme Court (with regard to the writ petitions filed by the parties).
- (c) In view of the factual discrepancies between, on the one side, the findings of the Deputy Director of Labour and, on the other side, the allegations made, and the newspaper clippings provided, by the complainant with regard to the violent suppression of the demonstration to protest against interference in the union elections on 20 December 2009 in various places of Moulvibazar District and during another demonstration held in that district, the Committee expects that the Government will ensure a thorough and independent investigation into all the allegations of violent suppression of demonstration and urges the Government to keep it informed in this regard.

B. The Government's reply

50. In its communication dated 22 May 2014, the Government indicates that high-level government officials, including the Minister for Labour and Employment, met several times with both parties and other stakeholders involved in the tea plantation sector. It adds that, based on the decisions taken at a tripartite meeting held on 21 May 2013, all cases that had been filed by both parties to the Labour Court, the High Court of the Supreme Court and the Appellate Division of the Supreme Court have been withdrawn on the basis of consensus. Based on the decisions of that same meeting, the wage of tea plantation workers has been increased through consultations with the workers and employers.

51. The Government further states that the trade union office has been vacant since the 21 May 2013 tripartite meeting. The election of the BCSU Central Executive Committee was due to be held on 31 July 2013 after necessary amendments to the BCSU constitution. The meeting was not held on that date as amending the BCSU constitution required mass consultation with the workers. Another meeting of the tea plantation workers was convened on 1 September 2013; however, the conflicting parties of the BCSU failed to come to a consensus on the amendment of its constitution.

52. More recently, on 10 May 2014 a meeting of the tea plantation workers was held which had the following outcome: (i) all conflicting provisions of the existing constitution of the BCSU, observing all necessary steps, will have to be amended as soon as possible to hold the election; (ii) after approval of the amended constitution by the concerned authority, necessary steps will be taken for the preparation of the voter list; (iii) all procedures should be completed within two months; and (iv) the tentative date for the election of the BCSU was set for 12 August 2014.

53. The Government indicates that the amended constitution of the BCSU was submitted to the Department of Labour and has already been approved. It also adds that the voter list is being prepared.

54. With respect to the allegations of violent suppression of the demonstration of tea plantation workers, the Government indicates that the matter was investigated by the Department of Labour and no evidence of violent suppression was found. Moreover, there was no case filed in any police station in this regard.

C. The Committee's conclusions

55. *The Committee takes note of the information provided by the Government in May 2014. It notes the outcome of the tripartite meeting held on 21 May 2013, including that all court cases that had been filed have been withdrawn on the basis of consensus and that a wage increase was accorded to the tea plantation workers.*
56. *The Committee is however concerned that, pending elections of the BCSU Central Executive Committee, the trade union office has been vacant since 21 May 2013. It observes that, following a meeting on 10 May 2014 of the tea plantation workers, a tentative date for the election of the BCSU was set for 12 August 2014 and the amended constitution has now been approved. The Committee therefore trusts that all remaining issues will be resolved in the near future and requests the Government and the complainant organization to keep it informed in this regard.*
57. *As regards the allegations made by the complainant with respect to the violent suppression of the demonstration to protest against interference in the union elections on 20 December 2009, the Committee notes that the Government recalls that the matter was investigated by the Department of Labour and that no evidence of violent suppression was found, nor were any charges filed in any police station in this regard. The Committee regrets that the thorough and independent investigation which it had requested into the allegations of violent suppression of demonstration appears not to have been carried out.*

The Committee's recommendation

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

Noting that the BCSU trade union office has been vacant since 21 May 2013, the Committee trusts that all remaining issues will be resolved in the near future and requests the Government and the complainant organization to keep it informed in this regard.

CASE NO. 2924

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 of Colombia (CUT) and**
- **the Trade Union of Official Employees and other Public Servants
for the Fund of Popular Housing (SINTRACVP)**

Allegations: The complainant organizations allege that the right of the workers of the Fund for Popular Housing to bargain collectively and to assert the rights recognized in the collective agreements currently in force is being denied on the pretext that a change in the legal nature of the entity has accorded the workers in question the status of public employees

59. The complaint is contained in communications dated 1 August 2011 and 13 April 2012 from the Single Confederation of Workers of Colombia (CUT) and the Trade Union of Official Employees and other Public Servants of the Fund for Popular Housing (SINTRACVP).
60. The Government sent its observations in communications dated 22 March and 6 December 2013.
61. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

62. The complainant organizations allege that the Colombian authorities, of both the capital district of Bogota and, at the national level, have repeatedly denied the right of the workers of the Fund for Popular Housing (hereinafter the Fund) to bargain collectively and to assert the rights recognized in the collective agreements in force, which the Fund has signed, on the pretext that a change in the legal nature of the entity has converted the workers in question into public employees. The complainant organizations indicate that the right of the workers to employment stability, in particular, is being violated, a right which is recognized in the collective agreements in force within the Fund, by opening up the posts of several leaders and members of the SINTRACVP to a public competition.
63. To support their allegations, the complainant organizations indicate that: (i) the Fund is a public entity that belongs to the administration of the capital district of Bogota. Founded in 1942, it is an autonomous legal entity that, as is established in its statutes, performs exclusively technical functions; (ii) the SINTRACVP was founded in 1964. Between 1964 and 1992, the Fund and the SINTRACVP concluded 12 collective labour agreements, the last one in November 1992; (iii) several clauses of those agreements remain valid in accordance with the provisions of section 478 of the Substantive Labour Code; and (iv) in

particular, the clause on stability contained in the collective agreements (which provides that the employment contracts of all staff of the Fund are indefinite and may only be terminated when a number of the just causes expressly referred to in the collective agreement can be established), and the clause providing for the inclusion of the clauses contained in the collective agreements in all the employment contracts of the employees of the Fund, remain fully in force.

64. The complainant organizations add that a labour dispute began in 1993 that led to the dismissal of several workers. In 1995, a significant number of workers, all of whom were members of the trade union and some of whom members of the organization's executive committee, were dismissed without the requirements set out in the collective agreement in force being met and without trade union immunity being waived. A number of the dismissed workers submitted individual applications for reinstatement, on which the courts began to rule as from 2000.
65. In 2001, the Labour Appeals Chamber of the Supreme Court of Justice handed down a ruling rejecting one of the abovementioned applications for reinstatement submitted by two female workers, arguing that, in the view of the Chamber, the Fund was a public entity and that the applicants had the status of public employees. However, out of more than 100 applications submitted, 24 led to a reinstatement, the ruling handed down by the Constitutional Court (T-510/02) being one of the most noteworthy legal decisions issued in favour of the workers. Another group of workers also had to institute proceedings to be reinstated to their respective posts, as had been ordered by the ordinary labour courts, and were subsequently issued with a legal order reinstating them as official employees and including them among the staff of the entity in question, which allowed them to reclaim the benefits provided for in the collective labour agreements.
66. The complainant organizations state that, at the same time, in 1996, the administration of the Fund unilaterally registered the trade union members into the public administration, considering them to be public employees. The workers concerned contested that decision, especially because, at that time, public employees were not eligible to bargain collectively. Their complaint was found to be admissible and, that same year, the National Civil Service Commission of the Administrative Department of the Public Service decided to remove the complainants from the public administration and to return them the status of official employees. In 2001, the executive committee of the Fund issued the new statutes of the Fund, according its workers the status of public employees and making their employment relationship, and removal from public administration, subject to the legal provisions in force. On the basis of an opinion issued by the Council of State in 2002, the President of the Republic issued Decree No. 1919 of 2002, following which the manager of the Fund decided to disregard the collective rights of the workers of the Fund who were considered to be public employees. The workers in question instituted proceedings, following which ruling T-069 of 2003 was handed down. The ruling provisionally recognized the collective rights of the complainants until the labour courts determined whether the collective agreements signed by the Fund applied to those workers.
67. Moreover, the SINTRACVP requested the National Civil Service Commission to respect the decisions it took in 1996 to remove all the workers of the Fund from public administration. The Commission rejected the request, indicating that the workers of the Fund who occupy posts considered to be public jobs "are accorded the status of temporary employees; should they wish to continue occupying their respective posts indefinitely and enter the public administration system, they will have to participate in the merit-based competition referred to in Official Announcement No. 001 of 2005".
68. The complainant organizations state that there are currently 20 posts occupied by trade union members who were reinstated to their posts under previous rulings and who are

protected by ruling T-069 of 2003 while they wait for the labour courts to rule on whether the rights set out in the collective agreements apply to them, their right to remain in the enterprise being at stake. They indicate that the Fund ignored that ruling and the clause on stability contained in the collective agreements and opened up those posts to a public competition for public employees. They add that, in 2012, the High Court of the Judicial District of Bogota, in the framework of proceedings instituted by a citizen wishing to access the public jobs at the Fund, ordered the posts currently occupied by the General Secretary of the trade union, Ms Nancy Bohórquez Chacón, and the trade union legal adviser, Mr Omar Merchán Galeano, also to be opened up to a public competition.

69. In the light of the above, the complainant organizations conclude that the Fund, which is an autonomous entity that performs exclusively technical functions, does not perform functions on behalf of the state administration and, therefore, its employees should be able to bargain collectively and to enjoy the benefits provided for in the collective agreements in force, and should be protected against any change in the legal nature of their relationship with the administration that would be detrimental to the trade union freedoms that they have exercised. The complainant organizations consider that the dismissal of trade union leaders with jurisdiction or of trade union members, and the inclusion of their posts in the list of posts that must be filled by means of a public competition, violate the clause on employment stability contained in the collective agreements, which, in turn, violates the right of trade unions to organize. Therefore, the complainant organizations request the Committee to urge the Government to take the necessary steps to ensure full respect for trade union rights and for the right of the workers of the Fund to bargain collectively and, in more general terms, to urge the State of Colombia to regulate effectively the right of all public employees to bargain collectively without the restrictions and limitations contained in Decree No. 535 of 2009, and in accordance with Conventions Nos 151 and 154.

B. The Government's reply

70. In communications dated 22 March and 6 December 2013, the Government transmitted the observations of the Fund on the complaint submitted. The Fund states that: (i) its status as a public entity has been recognized by both the Labour Appeals Chamber of the Supreme Court of Justice and the Council of State and, therefore, those persons who provide their services to it have the status of public employees, except those persons involved in the construction and maintenance of public works, who have the status of official employees; (ii) as a consequence of the legal nature of the entity, its posts are governed by the public administration system and must be filled by means of a merit-based, public competition; (iii) there are longstanding official employees of the Fund who, in the exercise of their right to organize, founded the SINTRACVP; (iv) the administration of the Fund has always respected the fundamental right to organize, which it has proven by signing two collective agreements with the SINTRACVP, in 2012 and 2013, which apply to official employees of the Fund; (v) following the 2003 protection ruling that provisionally recognized the collective rights of a number of workers, until the labour courts determined whether the collective agreements signed by the Fund applied to them, four sets of ordinary labour proceedings were instituted. In one case, the labour courts issued a definitive ruling that the workers in question were public employees and that the collective agreements signed by the Fund did not apply to them. In the other three cases, a decision has yet to be taken on the appeals filed by the complainants; and (vi) the Fund informed the court in question that it would withdraw the temporary protection at the beginning of the 2013 tax year granted by the protection ruling to the workers affected by the definitive ruling mentioned in the previous point.
71. The Government indicates that, in the light of the information provided by the Fund, it is clear that the context in which the acts that are the subject of the complaint took place did not necessarily arise from the Fund's disregard for Conventions Nos 87, 98, 151 and 154

but from the determination of the legal nature of the entity and, therefore, from the classification of the posts occupied by the staff of the Fund, on which the domestic high courts have ruled on several occasions. In this regard, the Government states that the complainant organizations have failed to demonstrate why the institutional adjustment of the entity, in accordance with the legislation in force, constitutes a violation of the ILO Conventions concerning freedom of association and collective bargaining, as there is no causal link that can determine that acts undermining freedom of association and the right to organize were committed.

72. The Government adds that, notwithstanding the above, the parties were summoned to a meeting before the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), on 13 February 2013, with the aim of reaching an agreement that could resolve the present complaint, during which no agreement was reached, as the Fund considered that the different judicial authorities had confirmed the legal nature of the entity and the classification of the posts resulting from it.

C. The Committee's conclusions

73. *The Committee notes that the present case refers to the alleged violation of the right of the workers of the Fund to bargain collectively, and especially of their right to enjoy the rights recognized in the collective agreements in force within the entity in question (particularly the clause on employment stability), the Fund having been determined to be a public entity and its workers having been classified as "public employees". The Committee also notes that the allegations contained in the complaint refer specifically to the situation of a group of 20 workers, which include the General Secretary and the legal adviser of the SINTRACVP, who have both been employees of the Fund since 1992 and 1978, respectively, and whose posts have been, or are about to be, opened up to a public competition in accordance with the legislation governing public jobs and public administration, which, according to the complainant organization, violates their right to employment stability recognized in the collective agreements signed by the Fund until 1992.*
74. *The Committee takes note of the Government's reply to the effect that the facts that are the subject of the complaint are not necessarily related to the Fund's disregard for the ILO Conventions concerning freedom of association, but to the determination of the legal nature of the entity and, therefore, to the classification of the posts occupied by the staff of the Fund as public jobs, on which the domestic high courts have ruled on several occasions since 2001, and that, as a consequence of this legal nature, the posts within the entity are governed by the public administration system and must be filled by means of a merit-based, public competition. The Committee also takes note of the information provided by the Fund and transmitted by the Government indicating that, following the 2003 protection ruling that provisionally recognized the collective rights of a number of Fund workers until the labour courts determined whether the collective agreements signed by the Fund applied to the workers in question, four sets of ordinary labour proceedings were instituted; that in one case, the labour courts made a definitive ruling that the workers in question were "public employees" governed by administrative law and that the collective agreements signed by the Fund did not apply to them, while in the other three cases, a decision has yet to be taken on the appeals filed by the complainants. Moreover, the Committee notes that, in 2012 and 2013, the Fund signed two collective agreements with the SINTRACVP, the scope of which is expressly limited to "official employees" of the Fund.*
75. *Lastly, the Committee notes that the parties were summoned to a meeting before the CETCOIT, on 13 February 2013, with the aim of reaching an agreement that could resolve the present complaint, during which no agreement was reached, as the Fund considered*

that the different judicial authorities had confirmed the legal nature of the entity and the classification of the posts resulting from it.

76. The Committee notes that the facts that are the subject of the present complaint took place in the context of a dispute over the legal nature of the Fund and the resulting legal status of its workers (“public employees” to whom the law governing public administration would apply or “official employees” to whom the Labour Code would apply). In this regard, the Committee notes that, following several decades during which the workers of the Fund were considered to be official employees, linked to the entity through an employment contract, a change in the legal status of those workers has taken place after the legal nature of the Fund was determined to be that of a public entity, on account of which the workers of the Fund are now considered to be “public employees”, except those persons involved in the construction and maintenance of public works. The Committee notes that the change in the legal status of the workers of the Fund, who are now considered to be “public employees”, was provided for in the new statutes of the Fund adopted in 2002, and has been endorsed by both the Labour Appeals Chamber of the Supreme Court of Justice and the Council of State.
77. Recalling that currently, under Decree No. 1092 of 2012, the Colombian legal order also recognizes the right of public employees to bargain collectively, the Committee notes that the relevant aspects of the present complaint deal with what is essentially a legal dispute over whether the collective agreements signed by the Fund up until 1992 (and especially the clause on employment stability) still apply to a group of 20 workers from the Fund who, when the public nature of the entity was determined, became “public employees” subject to the law governing public administration. The Committee recalls that paragraph 6 of the Collective Agreements Recommendation, 1951 (No. 91), provides that “disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions”. Noting that the above point of law is currently the subject of various legal proceedings, the Committee requests the Government to keep it informed of the rulings handed down in those proceedings.
78. Furthermore, the Committee notes that the 20 workers mentioned include two leaders of the SINTRACVP, the General Secretary, Ms Nancy Bohórquez Chacón, who has been working for the Fund since 1992, and the legal adviser, Mr Omar Merchán Galeano, who has been working for the Fund since 1978. Recalling that it has pointed out that one way of ensuring the protection of trade union officials is to provide that these officials may not be dismissed, either during their period of office or for a certain time thereafter except, of course, for serious misconduct [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 804], the Committee requests the Government to take the necessary steps to ensure that opening up several posts within the Fund to a public competition does not lead to the dismissal of the abovementioned trade union leaders.

The Committee’s recommendations

79. 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 judicial rulings pending in relation to the applicability of the collective agreements signed by the Fund until 1992, including the clause on employment stability, to public employees.**

- (b) The Committee requests the Government to take the necessary steps to ensure that the opening up of several posts within the Fund to a public competition does not lead to the dismissal of Ms Nancy Bohórquez Chacón, the General Secretary of the SINTRACVP, or Mr Omar Merchán Galeano, the legal adviser of the organization.*

CASE NO. 2954

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

Complaints against the Government of Colombia presented by

- **the Colombian Federation of Correctional and Prison System Workers (FECOSPEC) and**
- **the Union of Guards of the National Correctional and Prison Institute (SIGGINPEC)**

Allegations: The complainant organizations allege the anti-union nature of a bill to reform the National Correctional and Prison Institute (INPEC), the interference of the public authorities and INPEC in the creation of the Confederation of Prison Workers (UTP) trade union, the irregular transfer of union dues from two other trade unions to the abovementioned union, and anti-union transfers of trade union officials

- 80.** The complaints are contained in a communication dated 28 May 2012, submitted by the Colombian Federation of Correctional and Prison System Workers (FECOSPEC), and in a communication dated 20 June 2013, from the Union of Guards of the National Correctional and Prison Institute (SIGGINPEC).
- 81.** The Government sent its observations in a communication dated 22 August 2013.
- 82.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

- 83.** Firstly, FECOSPEC alleges that a bill submitted on 11 April 2011 to grant prison guards civil authority status has anti-union motives given that section 12.1 of Act No. 584 of 2000 excludes persons holding positions of civil authority from trade union benefiting from immunity. The complainant indicates that the aforementioned bill was not sent to the International Labour Standards Department of the ILO in violation of the agreement reached in March 2010 during the preliminary contacts mission carried out by the ILO,

when FECOSPEC agreed to withdraw its complaint under Case No. 2617 before the Committee on Freedom of Association.

- 84.** FECOSPEC also alleges that the Trade Union Association of Employees of the National Correctional and Prison Institute (ASEINPEC) interfered in the affairs of the other trade unions of the National Correctional and Prison Institute (INPEC) by convening, on 18 October 2011, a national assembly of INPEC union presidents, with the support of the Ministry of Social Security and INPEC, to reach a trade union agreement, in the absence of which, according to the President of the executive board of ASEINPEC, the President of the Republic would close INPEC and establish a new body. In view of the above, FECOSPEC filed criminal proceedings against the President of the executive committee of ASEINPEC.
- 85.** In addition, FECOSPEC indicates that, with the active participation and the interference of the Colombian Government in trade union affairs, the President of the executive committee of ASEINPEC created the Union of Prison Workers (UTP). This trade union succeeded in taking hold of large sectors of other INPEC trade unions, including FECOSPEC officials and activists. It was, however, rejected by FECOSPEC and other independent organizations. In an official letter of 3 May 2012, the Director-General of INPEC, Brigadier-General Gustavo Adolfo Ricaurte Tapia, consented to an irregular request from the UTP to receive the transfer of the union dues of more than 6,000 members of two other active trade unions (SIGGINPEC and ASEINPEC), against the individual wishes of most members and without the general assembly approving the merger or incorporation of these two trade unions within the new union.
- 86.** In its communication dated 20 June 2013, SIGGINPEC, which is a member of FECOSPEC, adds the following information regarding the transfer of trade union dues to the UTP by the INPEC management: (i) the Ministry of Labour issued an unfavourable opinion, denying the possibility of transferring the resources of the two organizations to the UTP, and indicating that the “management of the resources of the trade union shall be governed by decisions taken by its general assembly and the provisions of its statutes, not allowing for the interference of third parties in such matters”; (ii) despite the opinion issued by the Ministry of Labour, the Director-General of INPEC decided to undertake the automatic transfer of more than 2,000 SIGGINPEC members to the UTP, in non-compliance with the statutes of that organization and without requests for UTP membership, thereby reducing, as of May 2012, the union’s monthly income by more than 17,340,000 Colombian pesos; (iii) this financial loss dramatically affects the organizational and operational capacities of SIGGINPEC, which, among other things, can no longer pay for the services of its in-house lawyers, its permanent secretary or the rent of its union headquarters office; (iv) on 6 July 2012, a SIGGINPEC member, the inspector Mr Rafael Pérez Arce, submitted a complaint before the Attorney-General’s Office against INPEC for ordering his registration with the UTP without his personal authorization: in a ruling of 8 August 2012, the High Court of Bogotá restored Mr Pérez Arce’s SIGGINPEC membership (the Court considered that the employer had acted irregularly, especially given that the closure of SIGGINPEC or its merger with the UTP had not been approved at the union’s plenary meeting, thereby jeopardizing the survival of SIGGINPEC and disregarding its right to freedom of association); (v) on 20 September 2012, SIGGINPEC submitted a claim to the Director-General of INPEC for the reimbursement of each of the diverted dues; the claim was rejected despite the favourable opinion issued by the legal advisor attached to that body; (vi) in June 2013, out of more than 2,000 trade union members, INPEC only acknowledged the SIGGINPEC membership of ten workers; (vii) a labour dispute was filed before the Ministry of Labour for anti-union behaviour, to be then shelved under a ruling of April 2013; (viii) an action for the protection of constitutional rights (*tutela* proceedings) was filed against the Director-General of INPEC and against two of his employees, for favouring Mr Milton Aníbal Ospino, who passes himself off as

the general secretary of SIGGINPEC, falsifying public documents for the transfer of SIGGINPEC members to the UTP; and (ix) those *tutela* proceedings were rejected by the 24th Labour Court of Bogotá, considering that there was no evidence of irreparable harm, whereby annulment and rehabilitation proceedings were filed before the administrative courts, which will take years to issue their ruling.

87. Lastly, the complainant organizations allege that, faced with FECOSPEC's rejection of the UTP, INPEC applied a transfer policy to the following officials of trade unions that are members of FECOSPEC, omitting in each case to carry out the procedure to lift their trade union immunity: Mr Carlos Julio Saldaña Carvajal, counsel to the executive committee of the Trade Union of Employees of the Correctional and Prison Establishments of Cundinamarca (SINTRAPPECUN); Mr Hermes García García, President of the executive committee of the Trade Union of Prison Guards of Cundinamarca (SINGCUCUN), all the members of the executive committee of the recently created Female Trade Union Association of Bogotá Prisons Establishments (ASFECAB) (Ms Maria Stella Bilbao, Ms Rosalba Parrado Gomez, Ms Stella Gómez Zambrano, Ms Alixon Guatame Cadena, Ms Martha Patricia León Toloza, Ms Yolanda Acosta Lara, Ms Sabina Ayala Toscano, Ms Desmyriam Valencia Calvo and Ms Sonia García Ipus); Mr Eivar Daniel Joaqui Alvarado, the deputy member of the executive committee of the Trade Union of the High and Medium Security and Prison Establishments of Itagui (SINTRAITAGUI) and Mr Flavio Yamel Morales Camacho, counsel to the executive committee of the Itagui section of SIGGINPEC.

B. The Government's reply

88. In a communication of 22 August 2013, the Government transmits the observations made by INPEC regarding the submitted complaint. INPEC indicates that: (i) Decree No. 4150, of 3 November 2011, which removed INPEC's administrative functions, which were transferred to the Prison Services Unit, did not violate freedom of association rights, as can be seen by the large number of trade union organizations in the prison sector; neither did it violate the commitments undertaken by INPEC with the ILO preliminary contacts mission, in March 2010, in relation to the consultation of bills that will affect trade union interests, given that no bills have been submitted, let alone any affecting trade union interests; (ii) INPEC indicates that the institution's policy is to respect all freedom of association rights and that there are currently 56 trade union organizations in INPEC; (iii) INPEC has not made any declarations on the allegations contained in the complaint regarding the actions of the various trade union organizations in INPEC; (iv) with regard to the transfer of union dues to the UTP, INPEC proceeded in accordance with the law and the requests received following the creation of the new trade union organization, the UTP, respecting the decision taken by minority trade unions not to participate in the proposed procedure; and (v) regarding the transfer of the alleged trade union officials that were reported in the complaint, INPEC indicates, on a case by case basis, that the persons transferred were not trade union officials at the time of their transfer and that they were transferred to meet the needs of the service. It adds that Mr Saldaña and Mr Garcia filed *tutela* proceedings, which were rejected by the courts on the grounds that they were not trade union officials at the time of transfer.
89. In the light of the information provided by INPEC, the Government states that: (i) the allegations contained in this complaint refer to State restructuring and that the Committee on Freedom of Association is not, therefore, competent to hear the complaint; (ii) the transfers were carried out as a result of a unilateral decision by INPEC, in compliance with the regulations and with a view to streamlining prison services rather than prejudicing trade union organizations; (iii) the allegations refer to internal problems between the trade union organizations, which they should resolve among themselves; and (iv) the Colombian judiciary has examined the claims made by the complainants and has ruled against them.

C. The Committee's conclusions

90. *The Committee observes that this case refers to allegations of violations of freedom of association due to the submission of a reform bill by INPEC; interference by the public authorities and by INPEC in the creation of the UTP and in the irregular transfer of the trade union dues of two other trade unions to the UTP; and allegations of anti-union transfers of union officials.*
91. *The Committee takes note of the Government's reply which contains the information provided by INPEC and according to which: (i) the structure of INPEC has been reformed under a decree that in no way violates freedom of association; (ii) the allegations refer to internal problems between the trade union organizations, which they should resolve among themselves; (iii) the transfer of trade union dues to the UTP was carried out in accordance with the law and with the requests received following the creation of the new trade union organization, the UTP, respecting the decision taken by the minority trade unions not to participate in the proposed procedure; (iv) the transfer of workers was carried out as a result of a unilateral decision by INPEC, in compliance with the regulations and with a view to streamlining prison services, rather than prejudicing the trade union organizations; and (v) the Colombian judiciary has examined the claims made by the complainants and has ruled against them.*
92. *Regarding the allegation that a bill of 2011 to grant prison guards civil authority status had anti-union motives to exclude guards from trade union immunity, the Committee takes note of the reply provided by INPEC denying the existence of such a bill; and that Decree No. 4150, of 3 November 2011, which partially reformed the structure of INPEC, has no effect on the exercise of freedom of association, as demonstrated by the large number of registered trade union organizations within INPEC. The Committee takes note of this information and will therefore not pursue its examination of this aspect of the complaint.*
93. *With regard to the alleged acts of interference by the trade union organization ASEINPEC in the affairs of other INPEC trade unions, the Committee recalls that Conventions Nos 87 and 98 protect workers and their organizations against acts of non-compliance by the Government or the employer, but they do not refer to acts by trade union organizations against other workers' organizations. Therefore, the Committee will not pursue its examination of this aspect of the complaint.*
94. *Regarding the alleged interference by the public authorities and the INPEC management in the creation of the UTP, the Committee observes that the information provided indicates that the UTP was created on 27 October 2011, through a merger between various INPEC trade union associations, at a time when there was a multiplicity of trade unions and as a result of debates regarding the future closure of INPEC. The Committee observes that, in support of their allegations of interference, an appendix to the communications from the complainant organizations contains a copy of Request No. 7330-SUTAH from INPEC, dated 3 May 2012, addressed to the Ministry of Labour, in which INPEC refers to the background to the creation of the UTP, indicating that "as a result of the restructuring of INPEC and in order to guarantee the exercise of freedom of association without prejudice to the public service under the Institute's charge, a Government initiative considered it necessary to merge those organizations into one". In this regard, the Committee wishes to recall the principle that workers should be free to choose the union which, in their opinion, will best promote their occupational interests without interference by the authorities. It may be to the advantage of workers to avoid a multiplicity of trade unions, but this choice should be made freely and voluntarily [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 322]. The*

Committee requests the Government to ensure that, in the future, the INPEC authorities fully respect this principle.

95. With regard to the allegations in relation to the transfer of the union dues of two pre-existing trade union organizations (ASEINPEC and SIGGINPEC) to the newly created UTP by the INPEC authorities as of April 2012, the Committee notes that the information provided indicates that: (i) the officials of the two aforementioned pre-existing trade union organizations participated in the trade union merger process, which led to the creation of the UTP; (ii) the UTP founding document stated that “all members of dissolved trade union organizations, whose lists of members are transmitted with the aforementioned dues, are attached to the UTP”; (iii) the complainant organizations allege that the automatic transfer of trade union dues to the UTP was facilitated by the creation of fake documents, including fake lists of UTP members drawn up by SIGGINPEC officials or ex-officials; (iv) the legal office of INPEC considered that the transfer of trade union dues should be preceded by the certification of the dissolution and closure of the two organizations that would no longer be receiving the dues and by a written statement from each of the members agreeing to the transfer of their dues to the UTP; (v) on that same subject, the Ministry of Labour indicated that the legislation did not provide for the automatic transfer of trade union dues to another organization and that the management of the accounts of a trade union should be governed by the decisions of its general assembly and the provisions of its statutes, not allowing for the interference of third parties in such matters; (vi) under a ruling of 8 August 2012, the High Court of Bogotá considered that INPEC had transferred the trade union dues of a SIGGINPEC member to the UTP irregularly, especially since the SIGGINPEC plenary did not acknowledge its closure or its merger with the UTP, and this had jeopardized the survival of SIGGINPEC; (vii) the court found, however, that the worker’s union dues had been transferred back to SIGGINPEC as of August 2012; and (viii) the 24th Labour Court of Bogotá rejected the tutela proceedings filed by SIGGINPEC against the management of INPEC regarding the transfer of trade union dues, considering that there was no evidence of irreparable harm to the trade union organization, and it suggested that the complainant refer the case to the ordinary courts, whereby the case is currently pending resolution before the administrative courts.
96. The Committee recalls that, in general, the repartition of trade union dues among various trade union structures is a matter to be determined solely by the trade unions concerned [see **Digest**, op. cit., para. 474] and that respect of principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in this regard. They should not, for example, do anything which might seem to favour one group within a union at the expense of another [see **Digest**, op. cit., para. 859]. In this regard, the Committee regrets that INPEC has not followed the opinions issued by its legal office and by the Ministry of Labour and observes that the High Court of Bogotá found irregularities in the transfer of trade union dues for a member of one of the complainant organizations. The Committee requests the Government to keep it informed of the ruling regarding the validity of the transfer of the trade union dues of members of the complainant organizations to the UTP and expresses the firm hope that the ruling will be issued in the near future, given the importance of the funding of trade union organizations for the effective exercise of their activities. While awaiting that decision and taking note of the ongoing disputes, the Committee requests the Government to ensure that persons who had been members of the complainant organizations prior to the creation of the UTP had individually consented to the transfer of their union dues to that organization.
97. Regarding the alleged anti-union transfers of trade union officials, the Committee notes that the Government denies that the transfer decisions had any anti-union motives and indicates that they were taken to meet the needs of the service with a view to streamlining

prison service operations. The Committee also observes that in respect of various cases referred to in the complaint, judicial decisions have been issued denying the complainants' claims on the grounds that the persons transferred were not trade union officials. The Committee requests the Government and the complainant organizations to keep it informed of any further judicial decisions in this regard.

The Committee's recommendations

98. 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 ensure that, in the future, the INPEC authorities fully respect the principle of non-interference in trade union affairs.**
- (b) Given the importance of the funding of trade union organizations for the effective exercise of their activities, the Committee expects that the ruling regarding the validity of the transfer of the trade union dues of members of the complainant organizations to the UTP will be issued in the near future and requests the Government to keep it informed in this regard. While awaiting that decision, the Committee requests the Government to ensure that persons who had been members of the complainant organizations prior to the creation of the UTP had individually consented to the transfer of their union dues to that organization.**
- (c) Regarding the alleged anti-union transfers of trade union officials, the Committee requests the Government and the complainant organizations to keep it informed of any further judicial decisions in this regard.**

CASE NO. 2929

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

**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)**

<i>Allegations: Anti-union practices in the health-care sector</i>

99. The Committee examined this case at its March 2013 meeting and submitted an interim report to the Governing Body [see 367th Report, paras 603–641, approved by the Governing Body at its 317th Session (March 2013)].

100. The Government sent new observations in communications dated 24 October 2013 and 11 March 2014.

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

A. Previous examination of the case

- 102.** In its previous examination of the case in March 2013, the Committee made the following recommendations on the issues that remained pending [see 367th Report, para. 641]:

The Committee notes the allegations of the complainant organization regarding restrictions on communication between trade union leaders and workers at the Dr Carlos Durán Martín clinic and, in particular, the intervention of private security officers to remove four UNDECA leaders and two delegates from the clinic. The Committee notes that the complainant also reports that, on 12 June 2012, the Director-General of the San Francisco de Asís Hospital ordered disciplinary proceedings to be brought against union delegate Ms Maria Luz Alfaro Barrantes in relation to her participation in a demonstration against the cost-cutting measures applied by the hospital. The Committee observes that these allegations were submitted in subsequent communications to the first complaint, notes that the Government indicates that a reply is being prepared and hopes that this will be submitted without delay.

B. New response from the Government

- 103.** In its communications dated 24 October 2013 and 11 March 2014, the Government states in relation to the allegations concerning Ms María Luz Alfaro Barrantes that an administrative proceeding was commenced against her in conformity with due process in connection with certain violent acts (entering the San Francisco de Asís Hospital by force, and chaining the doors of the administrative offices and the office of the Directorate-General in order to prevent officials and the Director-General from entering). The action was led by Ms Alfaro Barrantes, and disrupted the hospital's normal activity and caused indiscipline and disorder. The Government denies having restricted the union leader's trade union rights, and adds in connection with the administrative proceeding brought against her, that Ms Alfaro Barrantes pled the statute of limitations and the case was closed on 3 August 2012.
- 104.** The Government also states that it rejects the complainants' allegations that communication was restricted between four union leaders and two delegates and the workers of the Dr Carlos Durán Martín Clinic. The Government states that their trade union rights were not restricted; instead, trade union organizations and associations were urged to comply with the provisions of Title VII of the Labour Relations Regulation in the discharge of their duties, with a view to preventing any deficiencies in patient care and services. The clinic's authorities receive regular visits from union representatives in the sector, but the National Union of Social Security Fund Employees (UNDECA) (the complainant in this case) is the only trade union organization which does not comply with the procedure established in the Labour Relations Regulation, of which it is fully aware in view of the fact that the organization participated in the drafting, negotiation and approval of those provisions. Moreover, it is worth noting that UNDECA secretaries filed a complaint on the same subject as the complaint presented to the Committee. As a result, a preliminary inquiry was ordered and assigned to Dr Armando Villalobos Castañeda, who is currently performing these proceedings.
- 105.** The Government adds that the San Francisco de Asís Hospital has endeavoured to create regulations which guarantee access to medical centres, and to establish clear forms of communication with both union members and non-members; the right to hold meetings; leave to attend assemblies and the means of requesting such leave. The trade union organizations are fully aware of these measures and cannot attempt to circumvent them in

actions such as those which have given rise to the present communication. The Government states that the complainant organizations have not submitted complaints to the national authorities on this subject.

- 106.** Lastly, the Government rejects all of the outstanding allegations, arguing that they are incorrect and lacking any legal basis.

C. The Committee's conclusions

- 107.** *Regarding the alleged expulsion of four union leaders and two delegates of UNDECA from the Dr Carlos Durán Martín Clinic in connection with communication activities with union members, the Committee notes that the Government rejects the allegations and states that: (1) the UNDECA representatives were in breach of the Labour Relations Regulation, which was negotiated with the organization's participation; and (2) that UNDECA has filed an administrative complaint which is under examination. The Committee requests the Government to inform it of the outcome of the administrative inquiry resulting from UNDECA's complaint.*
- 108.** *Regarding the allegations pertaining to the administrative proceeding brought against trade union delegate Ms María Luz Alfaro Barrantes in relation to her participation in a demonstration against the cost-cutting measures applied by the San Francisco de Asís Hospital, the Committee notes that the Government states that: (1) her union rights have not been restricted and that an administrative proceeding was brought against her in conformity with due process in connection with certain violent acts (entering the San Francisco de Asís Hospital by force, chaining the doors of the administrative offices and the office of the Directorate-General in order to prevent officials and the Director-General from entering); (2) that action was led by Ms Alfaro Barrantes and that it disrupted the normal activity of the hospital and caused indiscipline and disorder; and (3) in the administrative proceeding brought against Ms Alfaro Barrantes, she pled the statute of limitations and the case was closed on 3 August 2012. Under such circumstances, the Committee will not pursue its examination of this allegation.*

The Committee's recommendation

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

The Committee requests the Government to inform it of the outcome of the administrative inquiry being conducted in the Dr Carlos Durán Martín Clinic as a result of a complaint filed by UNDECA alleging restrictions on communication between trade union leaders and workers.

CASE NO. 2753

INTERIM REPORT

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

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

- 110.** The Committee last examined this case at its March 2013 meeting [see 367th Report, approved by the Governing Body at its 317th Session, paras 642–650].
- 111.** The Government submitted its observations in a communication of 13 February 2014.
- 112.** 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

- 113.** At its March 2013 meeting, the Committee made the following recommendations [see 367th Report, para. 650]:
- (a) The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's allegations, even though it has been requested several times, including through an urgent appeal, to present its comments and observations on the allegations and its response to the recommendations made by the Committee during its previous examination of the case. The Committee once again urges the Government to be more cooperative in the future.
 - (b) The Committee urges the Government to indicate without delay the reasons why the police withheld the passport of Mr Adan Mohamed Abdou, general secretary of the UDT, on 12 December 2010, and to indicate whether the document has been returned to him in order to ensure that he is able to move freely in order to carry out his mandate.
 - (c) The Committee urges the Government to provide without delay explanations concerning the arrest of 62 dockworkers, members of the Dock Workers' Union, during the demonstration of 2 January 2011 in front of the Parliament and concerning the conditions of their detention.
 - (d) The Committee once again urges the Government to provide explanations without delay concerning the need to obtain authorization from the Ministry of the Interior for organizing trade union meetings such as a trade union congress.
 - (e) Recalling that it has been urging the Government for many years to give priority to promoting and defending freedom of association and to give effect as a matter of urgency to the specific commitments that it has made before international bodies to settle pending issues and to enable the development of free and independent trade unionism, as the only guarantee of sustainable social dialogue in Djibouti, the Committee is bound to note with deep concern the lack of any progress in this direction. The Committee finds itself obliged

to firmly urge the Government once again to maintain a social climate free from acts of anti-union interference and harassment, in particular against the UDT.

B. The Government's reply

- 114.** In a communication dated 13 February 2014, the Government provides the following observations.
- 115.** With regard to the police's confiscation of the passport of Mr Adan Mohamed Abdou, General Secretary of the Djibouti Labour Union (UDT), on 12 December 2010 (recommendation b), the Government emphatically denies such an accusation and observes that Mr Mohamed Abdou has participated in the International Labour Conference for the last two years.
- 116.** Regarding the allegations concerning the arrest of 62 dockworkers, members of the Dock Workers' Union, during the demonstration of 2 January 2011 in front of Parliament, and their detention for three-months (recommendation c), the Government states that it has not received any complaint from the Dock Workers' Union and, moreover, does not have any information in this regard.
- 117.** Regarding the Committee's request for explanations regarding the need to obtain authorization from the Ministry of the Interior to organize trade union meetings (recommendation d), the Government indicates that there are no regulations requiring trade union and employers' organizations to obtain such an authorization to organize their meetings.
- 118.** Lastly, the Government affirms its commitment to social dialogue and tripartism in Djibouti and observes that the trade union and employers' organizations are represented in all national and international advisory bodies.

C. The Committee's conclusions

- 119.** *The Committee recalls that this case, presented by the UDT in December 2009, concerns allegations of interference by the authorities in trade union activities and acts of intimidation against the trade union officials and, in particular, the prevention of the UDT from accessing its premises and correspondence. More recently, in August 2011, the allegations also concerned the confiscation of the complainant's General Secretary's passport as he was preparing to leave the country to attend an activity organized by the ILO, in addition to acts of violence by the authorities against dockworker union members who were holding a peaceful demonstration.*
- 120.** *The Committee observes that in its communication the Government merely denies all the complainant's allegations. Regarding the confiscation of the passport of Mr Adan Mohamed Abdou, General Secretary of the UDT, on 12 December 2010, the Government denies the events and observes that Mr Mohamed Abdou has participated in the International Labour Conference for the last two years. Regarding the allegations concerning the arrest of 62 dockworkers, members of the Dock Workers' Union, during the demonstration of 2 January 2011 in front of Parliament, and their detention for three-months, the Government states that it has not received any complaint from the Dock Workers' Union and, moreover, does not have any information in this regard. Regarding the Committee's request for explanations regarding the need to obtain authorization from the Ministry of the Interior to organize trade union meetings, the Government indicates that there are no regulations establishing such a procedure for workers' and employers' organizations.*

- 121.** *In general, and given the history of the trade union movement in the country, the Committee notes with concern that the Government merely denies, without further explanation, these serious allegations of interference, harassment and the arrest of trade union members, without any apparent will to identify and resolve outstanding issues. With respect to the allegations concerning the arrest of 62 dockworkers, the Committee cannot be satisfied with the Government's brief reply and expects it to be more cooperative in the future and to provide further details regarding their three-month detention. Regarding the allegations as a whole, the Committee refers to the principles that it has outlined on previous occasions and it expects the Government to ensure their respect in the future [see 359th Report, paras 408–412; 363rd Report, paras 482–485].*
- 122.** *The Committee can only firmly urge the Government to give priority to promoting and defending freedom of association and to allow the development of free and independent trade unionism. To that end, the Committee expects the Government to maintain a social climate free of acts of anti-union interference and harassment, in particular against the UDT.*
- 123.** *Noting the Government's indication that trade union and employers' organizations are represented in all national and international advisory bodies, the Committee expects the UDT, under the leadership of Mr Adan Mohamed Abdou, to be able to participate effectively in the work of these bodies, together with all the other organizations representing employers and workers in the country.*

The Committee's recommendations

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

CASE NO. 3025

INTERIM REPORT

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

- the Egyptian Federation of Independent Trade Unions (EFITU)
- the Egyptian Democratic Labour Congress (EDLC) and
- the International Union of Food Workers (IUF)

supported by**the International Trade Union Confederation (ITUC)**

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

125. The complaint is contained in a communication dated 17 May 2013 submitted by the Egyptian Federation of Independent Trade Unions (EFITU), the Egyptian Democratic Labour Congress (EDLC) and the International Union of Food Workers (IUF).
126. The Government forwarded its observations to the allegations in a communication dated 1 September 2013, a communication received on 22 January 2014 and a communication dated 12 March 2014.
127. Egypt has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

128. In its communication dated 17 May 2013, the complainant organizations allege serious and systematic violations of the right to freedom of association, including legislative issues related to restrictions of the right to strike and of the right to organize and to bargain collectively. They indicate to be deeply troubled that the Government is not taking the necessary steps, in law or in practice, to allow for the establishment of a free and democratic trade union movement. To the contrary, the complainants denounce that the Government appears to be seeking to assert party domination over the trade union movement and allow employers to violate the workers' right to freedom of association with near impunity.

I. Legal changes under the Morsi Government

129. On 22 November 2012, the Government issued Act No. 96 of 2012 on the Protection of the Revolution. While framed as a tool for prosecuting the officials of the previous regime for the violent crimes committed against protestors during the revolution, the law goes far beyond that purpose. For example, section 4 lists several additional offences of the Penal Code that the special court established by the law may hear. Many of the listed crimes are extremely vague and could be employed to place unacceptable limits on the freedoms of

speech, press and assembly – key concerns for workers. Of particular concern are those offences listed in Part 15 of Book Three of the Penal Code. This Part prohibits all workers who perform a public service or work in a public utility from striking and criminalizes efforts of workers to prevent third parties from working. In Part 13 of Book Two, section 167 criminalizes the interruption of traffic, which could also apply in the situation of a labour rally or strike. Under section 5 of Act No. 96/2012, those accused of committing the stipulated crimes may be imprisoned based on a decision by the prosecutor general or his representative for a period of up to six months. The complainants express deep concern at the underlying criminal sanctions in the Penal Code, as well as at their incorporation into this new Act.

130. On 24 November 2012, the Government published an amendment to Act No. 35 of 1976 governing (official) trade unions (Decree No. 97 of 24 November 2012), which in effect ejected persons over 60 years of age from the executive boards of unions. This is a serious act of interference with the fundamental right of workers to elect their representatives and administer their organizations. The decree also provided that new board elections would be held in six months, with the Ministry of Labour empowered to fill any vacancies in the interim period. Workers fear that the Minister will use this power to fill vacancies with representatives close to the Government, putting these unions firmly under its control.
131. The complainants also qualify the new Constitution of 26 December 2012 as deeply troubling. First, it makes no reference to ILO Conventions or any other human rights instrument, nor does the proposed Constitution establish the primacy of ratified treaties over national law. Article 52 recognizes the right of trade unions to form and operate freely and insulates unions against administrative dissolution. However, article 53 limits the extent to which unions are free to organize their structures by providing that only one union may be allowed per profession. The establishment of a single union per occupation rule is inherently undemocratic and has been used in other countries to insulate incumbent, pro-government unions from challenge.
132. Furthermore, article 11 of the new Constitution appears to give the government sweeping powers to “safeguard ethics, public morality and public order” which “shall be regulated by law”. While a state has an obligation to, for example, safeguard public order, there are numerous laws currently in Egypt that far exceed any reasonable exercise of authority and instead infringe on fundamental human rights. Thus, we are deeply concerned that fundamental rights of speech and association may be limited or prohibited. Article 31 forbids insults or showing contempt, which could be broadly interpreted to limit legitimate speech – in a labour context or otherwise.

II. The case of Kraft/Mondelez

133. On 12 March 2011, the Minister of Manpower and Migration in the first post-Mubarak government issued a declaration affirming the right of all workers to establish independent unions and for these unions to function independently of the government or the state-controlled Egyptian Trade Union Federation (ETUF). Workers at Kraft Foods’ former Cadbury confectionery plant in Alexandria (now Mondelez International) sought independent trade union representation to represent their interests. For this they were harshly punished. In 2011, 38 workers were forced to accept early retirement after being threatened with dismissal for attempting to establish a union. Despite this, the workers persisted. On 28 April 2012, the workers held a general assembly and formed an independent union joined by 250 of the factory’s 300 workers. The union organized under the banner of the EDLC. Two days later, the union filed its founding documents with the Ministry of Manpower and Immigration in Alexandria.

- 134.** On 14 July 2012, a Government Decree awarded a pay rise (known as the “social allowance”) of 15 per cent to public sector workers and a 10 per cent increase to private sector workers. Section 1 of the Decree states clearly that the July increase is calculated based on “the basic salary on 30 June 2012” thus precluding previous salary increases taking the place of the decreed July 2012 increase. Section 4 makes it clear that other pay increases cannot substitute for the July allowance.
- 135.** On 26 July 2012, just before the end of the first shift, an unsigned notice printed on plain paper was posted on the factory bulletin board announcing that the company would not pay the social allowance decreed by the government. When workers arriving for the second shift asked for an explanation and a discussion with management, management refused – and most management staff left the plant. Only when a group of workers on the night shift of 26–27 July stopped work to protest against the management’s refusal to comply with the Decree awarding a 10 per cent pay increase to private sector workers did the factory management contact members of the union’s executive committee, ordering them to put an end to the spontaneous protest. Workers arriving for the third (11 p.m.–8 a.m.) shift came to work and were told the company had refused to discuss the notice with workers or their union representatives. Some 85 workers on that shift demonstrated inside the factory until the end of the shift, calling on management to meet with their union representatives to discuss the notice and the wages issue. When the spontaneous protest began at the start of the third shift, management called union leaders on their mobile phones, telling them to get people back to work. At least one of the five union leaders who were later suspended went to the factory around midnight but found the gates locked and was unable to gain access to meet the workers inside.
- 136.** On 30 July 2012, the union’s five founding board members were suspended, although the protest action had been a spontaneous response to management’s refusal to explain or discuss the notice they had put up denying the increase. On 8 August, the five union officials were informed that they were dismissed despite the fact that some were not even present on the night shift, and their cases referred to the Labour Court. On 15 August, the four remaining union officials approached the Managing Director with a request to resolve the issue through union-management discussions but the latter refused saying that he would not agree if the Labour Court ordered reinstatement. Other members of management staff echoed his confrontational position, and the factory manager threatened workers with dismissal. Since then, management has continued to reject recognition and dialogue.
- 137.** Meanwhile, repression spread out to the Kraft/Mondelez factory in Tenth of Ramadan City near Cairo where workers had also formed an independent union. Union members were told that management was taking legal measures to dissolve their organization – a clear attempt to intimidate them from either supporting the workers in Alexandria or taking action on their own behalf.
- 138.** The complainants recapitulate that the management of the Alexandria plant engaged in no meaningful discussion with the newly-formed union representing a large majority of its workforce – until it frantically instructed union leaders to stop a spontaneous demonstration on the night shift. After that it proceeded to sack the key leaders, and refused to negotiate with those who remained. This was followed by management intimidation of the independent union at the Tenth of Ramadan factory.
- 139.** The complainants report that the management’s policy of intimidating union members and supporters at the Alexandria factory continues. In two waves, on 3 March and 3 April 2013, a total of 35 workers from the Alexandria plant were transferred to the factory at Borg el Arab, 45 km from Alexandria with 12-hour shifts. The 35 workers were all known union supporters, including workers who had given testimony at the court proceedings

over the dismissal of the five union leaders. They were the only workers transferred from Alexandria to Borg el Arab.

140. The forced retirement of workers in 2011 and the suspension and dismissal of the five union officials at the Kraft/Mondelez Alexandria factory for exercising legitimate trade union activity constitute an obvious violation of the principles of freedom of association, just like the threats to dismiss additional workers. In Egypt, the company justifies its actions in the name of local law and practice which are sharply at variance with international human rights standards. The fact that the union was not registered by the government due to its independent nature and thus unable to exercise lawfully any of the labour rights under Egyptian law does not deprive the workers of their international right to associate or carry out their trade union activities. Moreover, the employer's retaliation against the workers merely for having testified in a judicial proceeding strikes a further blow, and will likely limit the ability of the court to hear from all relevant witnesses and thus to give the dismissed workers a fair hearing. Failure by the state to punish this act could send a strong signal to other workers not to participate in the judicial process, making it even easier to dismiss workers. The complainants find it particularly troubling that the dismissed unionists are unable to accept alternative employment because doing so would constitute a breach of their contracts with Mondelez. Thus, the workers are essentially condemned to starve.

III. *Broken industrial relations and anti-union discrimination without effective recourse*

141. The complainants denounce that the Government has made no progress in addressing the repeated observations of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) with regard to Conventions Nos 87 and 98, both of which Egypt ratified over 50 years ago. The allegations presented above are emblematic of a widespread and systematic problem in industrial relations in Egypt. The root of the problem is that there are simply no legitimate and legally recognized representatives of workers. The trade union monopoly, which has existed for decades, remains firmly entrenched in law and practice. Thus, many companies today refuse to deal with independent trade unions, in part because of their ambiguous legal status. Many leaders and members of independent unions have been fired or transferred to remote locations or otherwise penalized or abused. In such cases, the management often refers to the absence of legal protection for unions not subject to Act No. 35 of 1976 – namely independent unions – in retaliating against them. The Ministry of Manpower has consistently failed to register new, independent trade unions.
142. According to the complainants, some government departments and public sector companies still compulsorily deduct dues from workers and send the money to ETUF's affiliates. Some have retaliated when workers requested that these deductions be stopped or directed to the independent trade unions in which they are members. Many public sector workers are not allowed to renounce their compulsory membership to ETUF's affiliates. This membership is also tied to rights and benefits that they receive, such as medical services and supplementary insurance funds.
143. The complainants then provide several snapshot cases to the Committee and specify that this is not being done for the Committee to render conclusions concerning those cases but rather to illustrate the severity of the situation and the need for sweeping legal reforms. With reference to these snapshot cases, the complainants conclude that industrial relations are in crisis in Egypt. In view of the failure of employers to recognize or to negotiate with legitimate, independent unions, workers often have no other option to overcome employer resistance but to engage in strikes or sit-ins in order to bring employers to the table. While the right to strike is recognized in the new Constitution and in the Labour Act 12/2003,

legal strikes remain tied to the trade union monopoly. Thus, collective actions by independent unions are de jure illegal, forcing them to undertake thousands of wildcat strikes. If the union's collective action is successful in encouraging the employer to bargain, employers rarely comply with what has been negotiated. Management often suspends or dismisses those who participated in the collective action, and, in some cases, armed thugs are hired to threaten and attack workers engaged in collective action. This situation benefits none of the social partners and is likely to continue unless and until the government moves forward with legal reforms necessary to align national law with the requirements of Conventions Nos 87 and 98. The Government must urgently, and in consultation with worker and employer representatives, establish a system that recognizes independent workers' organizations, ensures that the traditional trade unions can freely elect their representatives, gives all unions protection from anti-union discrimination and interference and provides for legally enforceable collective agreements.

144. The complainants emphasize that they have provided ample evidence that the labour laws of Egypt must be reformed immediately and in full compliance with ILO Conventions. Otherwise, industrial relations in Egypt will only further deteriorate – serving none of the social partners. In particular, the complainants request:

- (i) repeal of Act No. 96/2012 and a full examination of Egypt's Penal Code to ensure that it is in full conformity with principles of freedom of association;
- (ii) repeal of Decree No. 97/2012 amending Act 35/1976 and removal of any officers appointed by the Minister under that decree;
- (iii) amendment of article 53 of the Constitution to eliminate the limitation to one federation per sector;
- (iv) measures to ensure that the trade union at Mondelez is immediately recognized, that management enter into good faith negotiations for a collective agreement, and that all trade unionists forced to retire or dismissed are reinstated and compensated back wages and any other benefits established under Egyptian law;
- (v) drafting, in consultation with the trade unions, and immediate adoption of, an ILO-compliant trade union law, which in particular confers full legal rights on independent trade unions.

B. The Government's reply

145. In a communication dated 1 September 2013, the Government states that, following the success of the Egyptian revolution of 25 January 2011, and the revolutionary expansion of 30 June 2013 entailing the collapse of the Muslim Brotherhood regime, the Arab Republic of Egypt is still in transition. At this stage, a roadmap has been drawn up, including the abrogation of the December 2012 Constitution, which was not truly agreed upon in society, the establishment of a Committee to amend the existing Constitution and a referendum for these constitutional amendments. Besides, expressing the main demands of the revolution, an interim President of the Republic has been appointed, and a new Ministry of Labour has been formed, which is working to achieve transitional and social justice for the entire spectrum of society. It is sought to realize people's demands through the election of members of the People's Assembly and a new President of the Republic within a period from six to nine months. In a communication received on 22 January 2014, the Government adds that the new Constitution of 2014 guarantees all workers' rights, especially in its articles 9, 11–15, 17, 73, 76, 77 and 93. The necessary measures are currently being taken to promulgate new trade union and workers legislation, which was reviewed by the International Labour Office and considered to be satisfactory, and which

addresses all matters which were criticized by trade unions in Egypt. The Government emphasizes that the present complaint relates to the former regime and that all the shortcomings alleged in the complaint have not been repeated under the present regime.

146. With regard to the Kraft/Mondelez case, the Government indicates, in its communication dated 1 September 2013, that, according to the relevant labour office, the members of the executive committee of the independent trade union submitted complaints to the labour office on 8 August 2012. However, as no out-of-court settlement could be reached, these cases were referred to justice on 30 August 2012. The persons concerned are: Mohamed Hussain Mustafa (Complaint No. 330); Mohamed Abu Elala Mohamed (Complaint No. 331); Mohamed Hassan Ahmad (Complaint No. 332); Nasr Awad Abderahim (Complaint No. 333); and Hussain Ahmad Hussain (Complaint No. 334).
147. As for the complainants' general allegations concerning workers' conflicts in various enterprises with independent trade unions, the Government provides information according to which in the majority of the enterprises concerned the complaints have been referred to justice, and nine are currently under judicial review. In its communication dated 12 March 2014, the Government submits further updated information concerning the snapshot cases provided by the complainants.

C. The Committee's conclusions

148. *The Committee notes that, in the present case, the complainant organizations allege serious and systematic violations of the right to freedom of association, including legislative issues related to restrictions of the right to strike and interference in election processes, and of the right to organize and to bargain collectively.*
149. *The Committee notes that the complainants denounce that the following legislation violates the principles of freedom of association: (i) Act No. 96/2012 on the Protection of the Revolution carries over certain Penal Code offences (e.g. prohibition for all workers who perform a public service or work in a public utility from striking, criminalization of efforts of workers to prevent third parties from working during a strike, criminalization of the interruption of traffic, etc.); (ii) Act 35/1976 as amended on 24 November 2012 removes persons over 60 years of age from the executive boards of unions and provides that new elections will be held in six months empowering the Ministry of Labour to fill any vacancies in the interim period; (iii) article 53 of the Constitution of 26 December 2012 provides that only one union may be allowed per profession; article 11 grants the Government sweeping powers to "safeguard ethics, public morality and public order"; and article 31 forbids insults or show of contempt; and (iv) the absence of legal recognition and protection for new, independent unions not subject to Act No. 35 of 1976 leads, in practice, to the refusal by many companies to recognize and negotiate with newly created independent enterprise trade unions, subsequent strike action (considered de jure illegal) and, as a result, the dismissal, suspension, transfer to remote locations or otherwise penalization of many leaders and members of independent unions; in this regard, the Committee notes several snapshot cases (18) supplied by the complainants to exemplify the systematic nature of these violations and to illustrate that there is a severe and widespread problem in industrial relations in Egypt and a need for far-reaching legal reforms (all cases concern dismissal or other prejudicial measures allegedly imposed as a result of strike or other legitimate trade union activity).*
150. *The Committee notes the Government's indications that: (i) following the revolution of 25 January 2011 and the developments of 30 June 2013, the country is still in transition (interim President of the Republic, new Ministry of Labour, elections to be held within six to nine months); (ii) that a roadmap has been drawn up, including the abrogation of the December 2012 Constitution, the establishment of a Committee to amend it and a*

referendum for these constitutional amendments; (iii) the new 2014 Constitution guarantees, according to the Government, all workers' rights, especially in its articles 9, 11–15, 17, 73, 76, 77 and 93; and (iv) the necessary measures are currently being taken to promulgate new trade union and workers legislation, which was reviewed and considered to be satisfactory by the International Labour Office and addresses all matters criticized by trade unions in Egypt. As regards the snapshot cases, the Committee welcomes the detailed and specific information provided by the Government and notes in particular that, in the majority of the enterprises concerned, the complaints have been referred to justice, and nine are currently under judicial review.

151. While taking due note of the Government's view that this complaint relates to the former regime and that all the shortcomings alleged in the complaint have not been repeated under the present regime, the Committee cannot but regret that, despite the Declaration of 12 March 2011 affirming the right to freedom of association, the Government has to date yet to adopt the necessary legislative framework to ensure full legal recognition to the numerous newly formed independent unions, which has apparently had disastrous effects on industrial relations in practice. Recalling that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 311], the Committee welcomes that, according to the information submitted by the Government under article 22 of the ILO Constitution, the final draft Law on trade union organizations and protection of the right to organize abandons the single trade union system and recognizes trade union pluralism. The Committee firmly expects that the draft law will be adopted as a matter of priority giving clear legislative protection to the numerous newly formed independent trade unions and ensuring full respect for freedom of association rights (including the right of these organizations to freely elect their representatives, organize their administration and activities and bargain collectively). In particular, recalling that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions, the Committee expects that the law will guarantee comprehensive and effective protection against anti-union discrimination of all leaders and members of the new independent unions. It requests the Government to transmit a copy of the law once adopted.
152. As regards Act No. 96/2012 as well as the corresponding provisions of the Penal Code, the Committee emphasizes that the right to strike may be restricted or prohibited in the public service only for public servants exercising authority in the name of the State. It also recalls that taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful; the case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work. The Committee also reiterates that the right to express opinions through the press or otherwise is an essential aspect of trade union rights, and that workers should enjoy the right to peaceful demonstration to defend their occupational interests; trade unions must however conform to the general provisions applicable to all public meetings and must respect the reasonable limits which may be fixed by the authorities to avoid disturbances in public places [see **Digest**, op. cit., paras 133, 144, 155 and 651]. The Committee therefore requests the Government to repeal or amend the relevant provisions of the Penal Code so as to guarantee full respect of the principles enunciated above, and to ensure that their application in practice does not impede the legitimate exercise of trade union rights. As for Act No. 96/2012, the Committee understands that it has since been repealed and replaced with another Act on organizing demonstrations and requests the Government to provide detailed information in this regard and a copy of the new law. The Committee, recalling the importance it attaches to the right of workers to elect their representatives in full freedom without any interference

from the public authorities, also requests the Government to take the necessary steps to repeal Decree No. 97/2012, which amended Act No. 35/1976 in a manner so as to ban the election of union officials of retirement age and empowered the Government to fill vacancies. Furthermore, the Committee notes the amendments to the Constitution of 26 December 2012 approved by referendum on 14 and 15 January 2014, and generally expects that the constitutional provisions are not applied in such a manner as to restrict the legitimate exercise of the freedoms of speech, assembly and association.

153. *Moreover, the Committee notes the complainants' specific allegations concerning violations of trade union rights at the enterprise Kraft/Mondelez, including allegations of acts of anti-union discrimination in 2011 (compulsory retirement of 38 workers for attempting to establish an independent union), 2012 (dismissal of five leaders of the independent union following a work stoppage and demonstration) and 2013 (transfer of 35 known union supporters and workers having given testimony at the court proceedings over anti-union dismissals). The Committee notes the Government's indication that the members of the executive committee of the relevant independent trade union (Mohamed Hussain Mustafa, Mohamed Abu Elala Mohamed, Mohamed Hassan Ahmad, Nasr Awad Abderahim and Hussain Ahmad Hussain) submitted complaints to the labour office on 8 August 2012 and that, since no out-of-court settlement could be reached, these cases were referred to justice on 30 August 2012.*
154. *While acknowledging the challenges created for workers and companies in a general environment where the State does not officially recognize the newly formed free and independent trade unions, the Committee nonetheless 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. Furthermore, the Committee wishes to emphasize that protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker. The Committee reiterates that not only dismissal, but also compulsory retirement, when imposed as a result of legitimate trade union activities, would be contrary to the principle that no person should be prejudiced in his or her employment by reason of trade union membership or activities [see **Digest**, op. cit., paras 799, 781 and 793].*
155. *Further to its general considerations concerning the need to provide clear legislative recognition and protection to all new independent unions, the Committee therefore requests the Government, in view of the apparent systematic resort to acts of anti-union discrimination at the abovementioned company and the number of workers allegedly affected, to also initiate an independent investigation into the abovementioned allegations, and to keep the Committee informed of its outcome. The Committee further requests to be kept informed of the final outcome of the ongoing judicial proceedings referred to by the Government over the five alleged anti-union dismissals of union officials in 2012 and of all measures of redress taken. Should it be found (during the investigation or the court proceedings) that the relevant trade union leaders and members were dismissed or otherwise prejudiced due to their exercise of legitimate trade union activities (including founding a new union or calling industrial action) or on account of their union affiliation, the Committee requests the Government to take the necessary measures to ensure that they*

are fully reinstated without loss of pay or transferred back to the original duty station. In the event that reinstatement or re-transfer is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the worker concerned is paid adequate compensation which would constitute a sufficiently dissuasive sanction for anti-union discrimination.

The Committee's recommendations

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

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

of the apparent systematic resort to acts of anti-union discrimination at the abovementioned company and the number of workers allegedly affected, to also initiate an independent investigation into the allegations of acts of anti-union discrimination of 2011 (compulsory retirement of 38 workers for attempting to establish an independent union), 2012 (dismissal of five leaders of the independent union following a work stoppage and demonstration) and 2013 (transfer of 35 known union supporters and workers having given testimony at the court proceedings over anti-union dismissals), and to keep the Committee informed of its outcome. The Committee further requests to be kept informed of the final outcome of the ongoing judicial proceedings referred to by the Government over the five alleged anti-union dismissals of union officials in 2012 and of all measures of redress taken. Should it be found (during the investigation or the court proceedings) that the relevant trade union leaders and members were dismissed or otherwise prejudiced due to their exercise of legitimate trade union activities (including founding a new union or calling industrial action) or on account of their union affiliation, the Committee requests the Government to take the necessary measures to ensure that they are fully reinstated without loss of pay or transferred back to the original duty station. In the event that reinstatement or re-transfer is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the worker concerned is paid adequate compensation which would constitute a sufficiently dissuasive sanction for anti-union discrimination.

CASE NO. 2871

INTERIM REPORT

Complaint against the Government of El Salvador presented by

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

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

157. The Committee examined this case at its November 2012 meeting and presented an interim report [see 365th Report, paras 603–623, approved by the Governing Body at its 316th Session (November 2012)].
158. In a communication of 9 July 2013, the complainant organizations (the Trade Union Confederation of El Salvador Workers (CSTS), the Trade Union Federation of Food, Beverage, Hotel, Restaurant and Agro-Industry Workers of El Salvador (FESTSSABHRA), and the LIDO SA de CV Company Trade Union (SELSA)) sent additional information.

159. At its March 2014 meeting [see 371st Report, para. 5], the Committee made an urgent appeal to the Government and drew 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 at its 184th Session, it could present a report on the substance of the case even if it had not received the information or observations of the Government in due time. To date, no information has been received from the Government.

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

A. Previous examination of the case

161. In its previous examination of the case, the Committee formulated the following conclusions and recommendations on the pending matters [see 365th Report, paras 618–622]:

- The Committee observes that, in the present case, the complainants allege: (1) that the company placed 17 workers, and later another 15 workers, on compulsory annual leave, in clear violation of the right to strike; (2) that between 8 and 12 July 2011, Guadalupe Atilio Jaimes Pérez, General Secretary of SELSA, was arrested and that criminal charges were brought against him following a false accusation by the assistant production manager of LIDO SA de CV alleging that he had been threatened; (3) that, on 17 July 2011, the strike was declared illegal by the judicial authority which ordered that it be called off despite the fact that the purpose of the strike was to seek a wage increase; and (4) that the company began dismissing the union's representatives at LIDO SA de CV and at FAMOLCAS SA de CV, a subcontractor (Ana María Barrios Jiménez, María Isabel Oporto Jacinta and Oscar Armando Pineda).
- The Committee takes note of the Government's statement that the judicial authority ordered the release of Guadalupe Atilio Jaimes Pérez, who had been accused by the assistant production manager of having threatened him on the LIDO SA de CV premises and that he had remained under arrest from 9 to 12 July 2011. The Committee requests the Government to clarify whether this union leader is still facing criminal charges and, if so, to inform it of the sentence handed down.
- The Committee take notes that, according to the Government, the SELSA union leader formally notified the Minister of Labour and Social Welfare that the collective dispute had been dropped, that the case had been shelved and that SELSA had reached this decision in order to focus on revising the collective agreement that was due to expire. The Committee requests the Government to keep it informed of developments in this regard.
- Regarding the allegation that the company placed workers on compulsory annual leave during the strike, the Committee notes the Government's indication that, according to the company, the workers' annual leave had been advanced at the request of a trade union leader. The Committee requests the complainants to reply to this assertion. With respect to the allegation relating to the declaration of the strike as illegal, the Committee observes that the objective of the strike was a wage increase and that the declaration of the illegality of the strike on this basis does not appear to be justified. The Committee expresses its concern and requests the Government to inform it of the judicial ruling declaring the workers' strike at LIDO SA de CV to be illegal.
- Finally, the Committee observes that the Government has not responded to the allegation regarding the dismissal of trade unionists Ana María Barrios Jiménez, María Isabel Oporto Jacinta and Oscar Armando Pineda and requests it to send its observations without delay.

B. New allegations from the complainants

162. In their communication of 9 July 2013, the complainant organizations state categorically, in relation to the Government's previous statements to which the Committee referred in its penultimate recommendation, that the information from the Government that the workers' annual leave had been advanced at the request of a trade union leader is false, and that there is no documentation to prove that the annual leave had been advanced at the request of a trade union leader; the complainants characterize the advance of annual leave as an anti-union measure.

163. The complainants state that, on 2 September 2011, as part of the collective bargaining taking place as the collective agreement was due to expire, the SELSA trade union requested the Minister of Labour to invite the company to the direct negotiation and conciliation stages.

164. Article 1 of the preliminary draft of the collective agreement which SELSA was expecting to negotiate included all workers working directly or indirectly for LIDO SA de CV at the Boulevard plant who were subcontracted by FAMOLCAS SA de CV (which shared the same owners as LIDO SA de CV). This also contributed to the company's intransigence, since it maintained a double standard by paying subcontracted workers less. The wages of the workers in the company are amongst the lowest in the industry in the country, at only US\$281.40 dollars per month plus some benefits payable under the collective agreement. The wages of workers subcontracted by FAMOLCAS are even lower, at between \$229 and \$240 per month without any additional benefits.

165. The complainants state that, on 15 and 19 December 2011, the Ministry of Labour invited the company to begin the direct negotiation process and the company did not attend. Hence, the direct negotiation stage ended on 3 January 2012. The conciliation stage finished subsequently, on 20 January 2012, despite the company not having attended three meetings organized by the Ministry of Labour. The company did not attend any of the official meetings. The union subsequently proposed arbitration as a solution in an attempt to avoid a strike. The company did not respond to that proposal either. As a result, the union was legally entitled to call a strike as from 21 February and up to 20 March 2012. Following a personal intervention from the Minister of Labour, the company participated in a dialogue forum. However, the representatives of LIDO attended merely to argue that, as a result of family disputes, the companies, which were under the control of their family members, owed them \$5 million, and that, in order to absorb the debt, they had planned to recover \$1.2 million in expenses over four years between 2010 and 2014, the same period in which they were not in a position to increase wages. In other words, the proprietors of LIDO requested the workers to accept a pay freeze, which has so far lasted four years, and it would take a further two years to pay the costs of the family dispute.

166. In view of the company's intransigence concerning participation in the collective bargaining stages, SELSA completed all of the legal procedures and informed the Director-General of Labour that the strike broke out on 19 March 2012. On 22 March and 9 April, SELSA wrote to the Ministry of Labour, requesting it to conduct the procedure under article 532 of the Labour Code to determine those workers who were to be present at the workplace, in view of the fact that the company was denying the strikers access to the workplace and started hiring strike-breakers, a procedure wholly inconsistent with the provisions of article 532. On 21 March, the Director-General of Labour notified the company that it must declare, within the legal time limit, whether it would exercise the right enshrined in article 532 of the Labour Code to meet with the trade union and determine the number, type and names of the workers who would be present in the company to carry out the types of work referred to in article 532. Almost immediately, the General Secretary of the SELSA trade union requested that the action be characterized as a

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

167. The complainants state that the trade union's struggle always included precisely those subcontracted workers, since article 1 of the preliminary draft of the collective agreement (the remaining articles of which were never discussed) provided that all benefits should be applicable to any worker, whether employed on a temporary, casual, occasional, interim or permanent basis, who performs work at the plant or in any LIDO subsidiary.

C. The Committee's conclusions

168. *The Committee regrets that, despite the time that has elapsed since the beginning of the case, the Government has not provided the information requested, despite being invited to do so by means of an urgent appeal (in March 2014). The Committee expects that the Government will be more cooperative in the future by providing the information requested.*
169. *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 that it had expected to receive from the Government.*
170. *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, while the procedure protects governments from unfounded accusations, governments must in turn recognize the importance of formulating detailed replies concerning allegations made against them for the purposes of an objective examination.*
171. *The Committee notes the additional information provided by the complainants on 9 July 2013 in response to its recommendations, whereby they: (1) deny that the workers' annual leave in 2011 was advanced at the request of a trade union leader and consider the advanced annual leave to be an anti-union measure; and (2) explain the reasons and irregularities which, in their view, pertain to the declaration that the 2011 strike was illegal. The Committee requests the Government to send its observations on the complainants' latest communication without delay.*
172. *Furthermore, given the total absence of any information from the Government, the Committee once again reiterates the recommendations of its November 2012 meeting, and requests it to obtain the comments of the company, via the employers' organization concerned, before sending the information requested.*

The Committee's recommendations

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

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

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

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

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

174. The Committee examined this case at its March 2013 meeting, when it presented an interim report to the Governing Body [see 367th Report, paras 651–685, approved by the Governing Body at its 317th Session (March 2013)].
175. At its March 2014 meeting [see 371st Report, para. 6], in the absence of observations from the Government, despite the time that had elapsed since the last examination of the case, the Committee made an urgent appeal to the Government and drew 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 at its 184th Session, it could present a report on the substance of the case at its next meeting, even if it had not received the information or observations from the Government in due time. To date, it has not received any information from the Government.
176. El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

177. In its previous examination of the case in March 2013, the Committee made the following recommendations on the allegations that remained pending [see 367th Report, para. 685]:
- (a) The Committee requests the Government to keep it informed of the implementation of the Committee's recommendations with regard to Case No. 1987, notably that the legislation be amended to remove the excessive formalities that apply to the establishment of trade union organizations and that trade union leaders, Luis Wilfredo Berrios and Gloria Mercedes González, be reinstated in their posts.
 - (b) The Committee requests the Government to take the necessary steps to ensure that SITCOM's continued existence is not jeopardized for motives that run counter to the principles of freedom of association and to bring the principles concerning dual trade union membership to the attention of the Constitutional Chamber of the Supreme Court. The Committee expects that those principles will be taken into account by the Court and requests the Government to keep it informed of the corresponding ruling handed down.

The Committee moreover urges the Government to take the necessary steps to amend section 204 of the Labour Code prohibiting dual union membership.

- (c) Regarding the suspension by the CTE of the deduction of union dues for workers affiliated to SITCOM, the Committee requests the Government to keep it informed of the outcome of the sanctions procedure that has been initiated and expects the sanctions imposed to be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in future in the company concerned.
- (d) Regarding the dismissal of trade union officials, Tania Gadalmaz and César Leonel Flores, the Committee requests the Government to keep it informed of developments in the sanctions procedure that has been initiated and expects the sanctions imposed to be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in future in the company concerned.
- (e) The Committee requests the Government to send it information without delay on the alleged discriminatory dismissal of five trade union officials at Construcciones y Servicios Integrales de Telecomunicaciones S.A. de C.V., a subcontractor, and on the alleged anti-union dismissals at the Atento company.
- (f) The Committee requests the Government to send it detailed information without delay on the request for a special inspection into the alleged domination of SINTRABATES by the employer, on the outcome of the corresponding court action brought by SITCOM and on the measures taken to amend the legislation as it relates to acts of interference to the detriment of trade unions.
- (g) The Committee requests the Government to provide it with information on the measures taken, including legislative measures, to provide union officials with effective protection in the event of anti-union discrimination.
- (h) The Committee invites the Government to consider, in consultation with the social partners, the review of section 622 of the Labour Code which provides that no appeal may be lodged against decisions handed down by a court of second instance.

B. The Committee's conclusions

- 178.** *The Committee regrets that, despite the time elapsed since the presentation of the complaints, the Government has not provided the requested information, even though it was requested to do so through an urgent appeal at its March 2014 meeting. The Committee requests the Government to be more cooperative in the future.*
- 179.** *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body], the Committee is obliged to present a report on the substance of this case without being able to take account of the information which it had hoped to receive from the Government.*
- 180.** *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 trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them.*
- 181.** *The Committee also recalls that the case under examination refers to allegations of numerous anti-union acts by companies in the telecommunications sector, including manoeuvres to bring about the dissolution of a branch union, anti-union dismissals and the establishment of a company union controlled by the employer and that, in addition, the complainants claim that several provisions of El Salvador's legislation need to be amended to guarantee more effective protection of freedom of association.*

182. *The Committee underlines the seriousness of these allegations, and again regrets that the Government has not sent the requested observations and information. It therefore reiterates the recommendations it made at its March 2013 meeting.*

The Committee's recommendations

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

- (a) The Committee regrets that, despite the time elapsed since its last examination of the case in March 2013, the Government has not provided the requested information and observations, even though it was requested to do so through an urgent appeal.*
- (b) The Committee again requests the Government to keep it informed of the implementation of the Committee's recommendations with regard to Case No. 1987, notably that the legislation be amended to remove the excessive formalities that apply to the establishment of trade union organizations and that trade union leaders, Luis Wilfredo Berrios and Gloria Mercedes González, be reinstated in their posts.*
- (c) The Committee once again requests the Government to take the necessary steps to ensure that SITCOM's continued existence is not jeopardized for motives that run counter to the principles of freedom of association and to bring the principles concerning dual trade union membership to the attention of the Constitutional Chamber of the Supreme Court. The Committee expects that those principles will be taken into account by the Court and requests the Government to keep it informed of the corresponding ruling handed down. The Committee moreover urges the Government to take the necessary steps to amend section 204 of the Labour Code prohibiting dual union membership.*
- (d) Regarding the suspension by the CTE of the deduction of union dues for workers affiliated to SITCOM, the Committee once again requests the Government to keep it informed of the outcome of the sanctions procedure that has been initiated and expects the sanctions imposed to be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in future in the company concerned.*
- (e) Regarding the dismissal of trade union officials, Tania Gadalmaz and César Leonel Flores, the Committee once again requests the Government to keep it informed of developments in the sanctions procedure that has been initiated and expects the sanctions imposed to be sufficiently dissuasive so that there is no recurrence of this kind of anti-union action in future in the company concerned.*
- (f) The Committee once again requests the Government to send it information without delay on the alleged discriminatory dismissal of five trade union officials at Construcciones y Servicios Integrales de Telecomunicaciones SA de CV, a subcontractor, and on the alleged anti-union dismissals at the Atento company.*

- (g) *The Committee again requests the Government to send it detailed information without delay on the request for a special inspection into the alleged domination of SINTRABATES by the employer, on the outcome of the corresponding court action brought by SITCOM and on the measures taken to amend the legislation as it relates to acts of interference to the detriment of trade unions.*
- (h) *The Committee once again requests the Government to provide it with information on the measures taken, including legislative measures, to provide union officials with effective protection in the event of anti-union discrimination.*
- (i) *The Committee once again invites the Government to consider, in consultation with the social partners, the review of section 622 of the Labour Code which provides that no appeal may be lodged against decisions handed down by a court of second instance.*

CASE NO. 2923

INTERIM REPORT

Complaint against the Government of El Salvador presented by

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

Allegations: Murder of a trade union leader

- 184.** The Committee last examined this case at its March 2013 meeting, when it presented an interim report to the Governing Body [see 367th Report, approved by the Governing Body at its 317th Session (March 2013), paras 698–715].
- 185.** At its March 2014 meeting [see 371st Report, para. 6], since the Government had not sent its observations despite the time that had elapsed since the last examination of the case, the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body at its 184th Session, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any information.
- 186.** El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. Previous examination of the case

- 187.** In its previous examination of the case in March 2013, the Committee made the following recommendations [see 367th Report, paras 698–715]:

- (a) The Committee, deeply deploring and condemning the murder of union leader Mr Victoriano Abel Vega, requests the Government to provide information on the criminal proceedings initiated and to take all measures at its disposal to ensure that investigations are intensified to clarify the facts, identify the guilty parties and impose severe punishment upon them, with a view to preventing such types of criminal offences.
- (b) Furthermore, as the complainant organizations have linked the murder of the union leader to his union activities, and in particular to his advocacy for the establishment of a union in the municipal services of San Sebastián (allegedly impeded by the dismissal of the union's founding members and the silence of the labour administration concerning the trade union complaints), the Committee requests the Government to send its observations on the matter and to ensure that the workers in question are able to establish a trade union without restriction.
- (c) Lastly, the Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.

The Committee's conclusions

- 188.** *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the requested information, even though it was requested to do so through an urgent appeal at its meeting in March 2014. The Committee requests the Government to be more cooperative in the future.*
- 189.** *In these circumstances and in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body], the Committee is obliged to present a report on the substance of the case without being able to take account of the information that it had hoped to receive from the Government.*
- 190.** *The Committee recalls that the purpose of the whole procedure established by the ILO for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of presenting, for objective examination, detailed and precise replies concerning allegations brought against them.*
- 191.** *The Committee recalls that the allegations in the present case refer to the murder, on 16 January 2010, in the city of Santa Ana, of Mr Victoriano Abel Vega (Secretary-General of the Union of Municipal Workers of Santa Ana (SITRAMSA). He died from multiple gunshot wounds after leaving the City Sanitation Services office, where he had gone to present a letter requesting permission to attend a union meeting of the Autonomous Confederation of Salvadorian Workers (CATS). The complainant organizations highlighted that, upon leaving the office, Mr Victoriano Abel Vega, who had already received death threats for his union activities, was killed by five persons who were waiting for him, and who drove away in a vehicle that was waiting for them. In its last examination of the case, the Committee took note of the Government's statement to the effect that criminal proceedings had been initiated in relation to the murder.*
- 192.** *The Committee highlights the seriousness of the allegations, deeply deplores and once again condemns the murder of the trade union leader. The Committee regrets that the Government has still not sent the requested observations and additional information on this case, despite its extremely serious and urgent nature, which was specifically drawn to the attention of the Governing Body. The Committee therefore reiterates the recommendations made at its March 2013 meeting.*

B. The Committee's recommendations

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

- (a) *The Committee regrets that, despite the time that has elapsed since the last examination of the case in March 2013, the Government has not sent the requested information and observations, even though it was requested to do so through an urgent appeal. The Committee urges the Government to be more cooperative in the future.*
- (b) *The Committee, deeply deploring and condemning the murder of union leader Mr Victoriano Abel Vega, once again requests the Government to provide information on the criminal proceedings initiated and to take all measures at its disposal to ensure that investigations are intensified to clarify the facts, identify the guilty parties and impose severe punishment upon them, with a view to preventing such types of criminal offences.*
- (c) *Furthermore, as the complainant organizations have linked the murder of the union leader to his union activities, and in particular to his advocacy for the establishment of a union in the municipal services of San Sebastián (allegedly impeded by the dismissal of the union's founding members and the silence of the labour administration concerning the trade union complaints), the Committee once again requests the Government to send its observations on the matter and to ensure that the workers in question are able to establish a trade union without restriction.*
- (d) *Lastly, the Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.*

CASE NO. 2986

DEFINITIVE REPORT

**Complaint against the Government of El Salvador
presented by
the Union of Workers of the National Centre of Registries (STCNR)**

Allegations: The rejection by the Ministries of Economy and Finance of a collective agreement on financial and budgetary grounds

- 194. The complaint is contained in a communication from the Union of Workers of the National Centre of Registries (STCNR) dated 10 August 2012. This organization sent additional information and new allegations in communications dated 25 October 2012 and 5 March 2013.
- 195. The Government sent its observations in a communication dated 30 May 2013.
- 196. El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining

Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

- 197.** In its communication of 10 August 2012, the STCNR alleges that, having negotiated and signed a collective agreement with the National Centre of Registries (CNR) in April 2012, following the corresponding legal and financial examination by that Centre (which verified that the institution had the necessary budgetary resources), it received a ruling from the Minister of Finance, dated 17 July 2012, containing an unfavourable opinion with respect to the approval of the collective agreement.
- 198.** In its communication of 25 October 2012, the STCNR indicates that, in view of the above, the parties to the negotiation agreed to make the clauses relating to the duration of the collective agreement clearer, specifying that it would come into force on 1 January 2013. They accordingly signed a new collective agreement, adding a text signed by the parties and addressed to the Minister for the Economy (indicating that the workers will continue to receive the current financial benefits with some slight increases, thereby demonstrating that the collective agreement was reasonable and could be funded) and another explanatory text addressed to the Minister of Finance.
- 199.** In its communication of 5 March 2013, the STCNR reports that eventually, on 20 February 2013, the collective agreement was registered by the Minister of Labour and Social Welfare following its approval by the Minister for the Economy and the Minister of Finance.

B. The Government's reply

- 200.** In its communication of 30 May 2013, the Government responds to the complaint by the STCNR and reports that on 3 September 2012 the trade union presented a draft collective labour agreement to the CNR authorities to initiate the procedure for the agreement to be negotiated, signed and registered. In accordance with section 287 of the Labour Code, which states that: "To be valid, a collective agreement signed with an autonomous official institution shall first be approved by the ministry concerned, after the Ministry of Finance has given its opinion", the CNR authorities submitted the draft collective labour agreement to the Minister of Economy and the Minister of Finance, and received an unfavourable opinion on the grounds that the financial clauses could not be funded under the public sector cost-saving and austerity policies for 2012.
- 201.** The Government further indicates that, for that reason, the CNR and the trade union of that institution examined the grounds for the unfavourable opinion issued in relation to the collective labour agreement with a view to addressing the observations regarding the public sector cost-saving and austerity policies for 2012, and that the corresponding amendments were made.
- 202.** Subsequently, on 6 September 2012, the CNR sent the collective labour agreement to the Minister of Economy, addressing the observations made by the Minister of Finance. On 1 February 2013, the Minister of Economy indicated that it had no objection to the approval of the collective labour agreement including the new changes, considering that they addressed the observations made by the Minister of Finance regarding clauses 71 (salary adjustments) and 79 (Voluntary Retirement Fund).
- 203.** The Government adds that, on 19 February 2013, members of the trade union executive board submitted the collective labour agreement to the National Department of Social

Organizations of the Minister of Labour and Social Welfare for registration on 20 February 2013, and that the agreement was registered.

C. The Committee's conclusions

204. *The Committee observes that the complainant in this case alleges that the Minister of Finance and the Minister of Economy issued an unfavourable opinion regarding the collective agreement between the STCNR and the CNR.*
205. *The Committee observes that the Government reports that both ministries indicated that the financial clauses of the collective agreement could not be funded under the public sector cost-saving and austerity policy for 2012. The Committee notes that the Government indicates that, having addressed the observations made by the financial authority and introduced the corresponding amendments, the parties resubmitted the draft collective agreement to both ministries and that the Minister of Economy confirmed that the observations had been duly addressed.*
206. *Lastly, while it highlights that the examination of collective agreement clauses with a financial impact by the financial authorities should take place during the collective bargaining process and not, as has occurred in this, and in other cases brought before the Committee, after the collective agreement has been signed by the parties, as this is incompatible with the principle of free and voluntary collective bargaining and the principle according to which "agreements should be binding on the parties" [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 939], the Committee notes with interest that the complainant and the Government confirm that the collective agreement was registered by the Minister of Labour and Social Welfare on 20 February 2013. In that light, and given that the problem that gave rise to this complaint has been resolved, the Committee will not pursue the examination of this case.*

The Committee's recommendation

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

CASE No. 3007

INTERIM REPORT

Complaints against the Government of El Salvador presented by

- the Trade Union of Workers of the Salvadorian Social Security Institute (STISSS), and
- the Union of Doctors of the Salvadorian Social Security Institute (SIMETRISSS)

Allegations: Obstacles to trade union activities, refusal of facilities for union representatives and obstacles to engagement by SIMETRISSS in collective bargaining

- 208.** The complaints are contained in a communication from the Trade Union of Workers of the Salvadorian Social Security Institute (STISSS), dated 15 January 2013, and in a communication of the Union of Doctors of the Salvadorian Social Security Institute (SIMETRISSS), dated 14 June 2013.
- 209.** In view of the lack of response from the Government, at its March 2014 meeting [see 371st Report, para. 6] the Committee made an urgent appeal to the Government and drew 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 at its 184th Session, it would present a report on the substance of the case at its next meeting, even if it had not received the information or observations from the Government in due time. To date, it has not received any information from the Government.
- 210.** El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

Allegations presented by STISSS

- 211.** In its communication of 15 January 2013, the STISSS alleges serious acts of interference in trade union affairs by the Director-General of the Salvadorian Social Security Institute (ISSS) in 2012 and repeated public statements in the media to discredit the STISSS and its national executive board, accusing a group within the executive board of bankrupting the trade union with a deficit of more than US\$100,000. According to the allegations, the Director-General acknowledged a minority group within the executive board; declared that the proposed nominations of union representatives did not comply with its statutes; suspended bilateral meetings claiming internal divisions and lack of leadership; did not recognize trade union leave; provided financial backing for five union officials with whom the ISSS Director-General continued to meet "and reach agreements"; and, although the extraordinary general assembly of 17 November–15 December 2012 elected the executive board, which was re-elected on 16 December at the ordinary general assembly, he illegally withheld the union dues (which had still not been received at the date of the complaint).
- 212.** The STISSS, moreover, reports that a series of criminal or labour proceedings to impose penalties were filed against various union officials, allegedly violating due process. In the end, the courts ruled in favour of the officials, except in the case of Ms Andrea Concepción Bonilla de Alarcón, whose dismissal by the ISSS was authorized by the judicial authority, even though the proceedings had twice been declared null and void.

Allegations presented by SIMETRISSS

- 213.** In its communication dated 14 June 2013, SIMETRISSS indicates that its members include 1,000 doctors of the ISSS, which employs 14,000 workers distributed across 82 workplaces, including a total of 2,300 doctors. The holder of the rights to the collective agreement – which applies to all workers – is not SIMETRISSS (which is the only trade union for doctors) but another trade union (STISSS). In this regard, the legislation states that only a trade union representing 51 per cent of the workers of the company or public institution is authorized to negotiate a collective agreement, which will thereafter apply to all the workers of that institution.

214. SIMETRISSS indicates that it is not seeking to enter into a collective agreement with the ISSS, but that it wishes to reach an economic agreement to adjust the medical staff's wages, which have been frozen for the last 12 years. The ISSS administration refuses to do this on the grounds that it can only bargain with the trade union holding the bargaining rights. In this regard, the complainant indicates that, in 1998, as a result of a strike held by the trade union, an agreement was signed amending the wage scale in force in the ISSS, increasing doctors' wages through the payment of three instalments, but that the successive ISSS administrations have, unfortunately, failed to comply with the agreement, refusing to enter into negotiations on the subject, especially when, in 2012, the complainant requested the launch of collective bargaining. As a result, the purchasing power of doctors' wages has fallen by 50 per cent.

215. Furthermore, the complainant reports the systematic and unjustified refusal of the facilities to carry out its trade union duties. In particular, the complainant refers to the following obstacles to its trade union activities:

- refusal of paid trade union leave to enable its representatives to carry out trade union activities, despite having requested leave on various occasions, providing assurances that the leave will not impinge upon the quality of health services and, to that end, proposing that the administration only grant leave to five members of the executive board, at specific times in their working day. The employer (ISSS) argues, however, that the Labour Code only provides for paid union leave in respect of the bargaining rights holder;
- the members of the executive board are prevented from accessing the institution's different workplaces, thereby violating their right to represent the members of the trade union (under the institutional regulations, workers can only enter the establishments in which they work);
- obstacles to posting trade union announcements in workplaces, thereby interfering with the announcement of assemblies and other meetings organized by the union;
- undue delays in communications with the ISSS administration, and the institutional representatives with decision-making powers, with a view to resolving collective disputes affecting the interests of doctors; this has occurred on a number of occasions leading to the suspension of meetings of the high-level round table set up with the ISSS to address socio-economic grievances, and to resolve labour disputes;
- refusal to give union officials the information they need to carry out their duties, such as job descriptions, financial statements, institutional agreements, etc.;
- the ISSS illegally withholds the union dues of members of the complainant union.

216. Lastly, the complainant alleges restrictions to trade union activities through anti-union instructions that the ISSS Deputy Director for Health circulated among the directors and the management of the local medical centres, in a memorandum dated 11 April 2013 entitled "administrative instructions", containing a series of mandatory instructions aiming to prevent trade union activities. The contents of those instructions have the following effects:

- they do not allow time for the trade unions to present situations or problems related to trade union activities in the administrative meetings held in the medical centres and attended by the doctors working in those centres;
- they require the directors and management to report cases of dereliction of duty by staff under their authority, thereby seeking to prevent both the members of the

executive board and the local trade union representatives from meeting workers to give them information on trade union objectives and provide the respective guidance on the trade union's operations, which does not, of course, prejudice the effective operation of health services given the brevity of those meetings. Furthermore, they require the Head of the Security Department to be informed of incidents affecting the proper operation of the workplace, thereby seeking to suppress the defence of just and legitimate grievances by the trade union through peaceful means of pressure not affecting patients;

- they prevent contact between union representatives and the media by designating the communications officer as the only person authorized to deal with consultations and requests for interviews from the press. This restricts the freedom of expression and, worse still, violates citizens' right to receive accurate information regarding the situation of the ISSS health services.

217. The complainant indicates that, in line with this approach, the ISSS management has sought to threaten the medical staff with disciplinary sanctions for supporting public complaints and means of pressure of the trade union, as was the case on 11 April 2013, when the director of the specialized treatment hospital circulated instructions to the management of that centre to threaten doctors participating in activities organized by the trade union with sanctions.

218. SIMETRISSS requests that Conventions Nos 87, 98 and 135 and Recommendation No. 143 be respected.

B. The Committee's conclusions

219. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaints, the Government has not sent the requested information, even though the Committee requested it to do so through an urgent appeal at its March 2014 meeting. The Committee urges the Government to be more cooperative in the future.*

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

221. *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of the allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them.*

Allegations concerning SIMETRISSS

222. *The Committee notes that in the present case the complainant alleges that: (1) the ISSS administration refuses to bargain with the complainant union on an agreement to adjust doctors' wages, which have been frozen for over 12 years, on the grounds that, in accordance with the Labour Code, it can only bargain with the trade union holding the bargaining rights within the ISSS, and it persists in ignoring an agreement that it signed in 1998 with the complainant union, which would increase doctors' wages through the payment of three instalments; and (2) it refuses to provide trade union facilities and, in particular, to provide the union officials with the information that they need to carry out*

their duties, to provide paid union leave for the members of the executive board of the complainant union, as well as preventing union announcements from being posted in workplaces; the ISSS illegally withholds the union dues of the members of the complainant union and prevents communication with trade union representatives, suspending on a number of occasions the meetings of the high-level round table to address labour grievances and resolve disputes.

223. The Committee observes that part of the problems raised in this case concern the refusal of the right to bargain collectively and trade union facilities for a minority trade union of doctors, while the ISSS majority trade union has signed a collective agreement which applies to everyone given that the trade union represents at least 51 per cent of the workers.

224. In this regard, the Committee wishes to highlight the following principles [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 346 and 359]:

- The Committee has pointed out on several occasions, and particularly during discussion on the draft of the Right to Organize and Collective Bargaining Convention, that the International Labour Conference referred to the question of the representative character of trade unions, and, to a certain extent, it agreed to the distinction that is sometimes made between the various unions concerned according to how representative they are. Article 3, paragraph 5, of the Constitution of the ILO includes the concept of “most representative” organizations. Accordingly, the Committee felt that the mere fact that the law of a country draws a distinction between the most representative trade union organizations and other trade union organizations is not in itself a matter for criticism. Such a distinction, however, should not result in the most representative organizations being granted privileges extending beyond that of priority in representation, on the ground of their having the largest membership, for such purposes as collective bargaining or consultation by governments, or for the purpose of nominating delegates to international bodies. In other words, this distinction should not have the effect of depriving trade union organizations that are not recognized as being among the most representative of the essential means for defending the occupational interests of their members, for organizing their administration and activities and formulating their programmes, as provided for in Convention No. 87.
- 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.

225. The Committee notes that the allegations in this case indicate that the complainant doctors’ union does not consider itself sufficiently represented, at least in terms of wages, by the majority trade union and that it reports that wages have been frozen for over 12 years, that the purchasing power of doctors’ wages has fallen by 50 per cent since 1998 and that, under an agreement signed in 1998 (which, according to the allegations, the ISSS refuses to honour), the wage scale for doctors should have been adjusted at that time.

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

227. *The Committee takes note of the allegations of the complainant union regarding: (1) the instructions that the ISSS Deputy Director for Health circulated among the directors and the management of the local medical centres, in a memorandum in 2013, which, according to the allegations, seriously restricts trade union rights (according to the allegations, they aim to prevent contact between the trade union representatives and the media; do not allow time in administrative meetings for the trade union representatives to present problems related to trade union activities; and create the obligation to inform superiors of meetings between trade union officials and members, and of industrial action by the union); and (2) the instructions given by a hospital director, on 11 April 2013, to threaten doctors participating in activities organized by the trade union with sanctions. The Committee urges the Government to send its observations on these allegations without delay.*

Allegations concerning the STISSS

228. *The Committee takes note of the allegations presented by the STISSS concerning acts of favouritism by the authorities in the context of a dispute between factions within the executive board. The Committee underlines that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in this regard. They should not, for example, do anything which might seem to favour one group within a union at the expense of another [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 859]. The Committee urges the Government to send its observations on these allegations, without delay, to provide it with sufficient information for the complaint to be examined.*

229. *The Committee expects that the Government will respond to all the pending issues, submitting also information from the ISSS.*

The Committee's recommendations

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

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

Allegations concerning SIMETRISSS

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

- (c) *While it takes note of the allegations presented by the complainant union regarding: (1) the instructions that the ISSS Deputy Director for Health circulated among the directors and managers of local medical centres, in a memorandum in 2013, which, according to the allegations, seriously restricts trade union rights (preventing contact between the trade union representatives and the media; not allowing time in administrative meetings for the trade union representatives to present problems related to trade union activities; and creating the obligation to inform superiors of meetings between trade union officials and members, and of trade union activities); and (2) the instructions given by a hospital director, on 11 April 2013, to threaten doctors participating in activities organized by the trade union with sanctions. The Committee urges the Government to send its observations on these allegations without delay.*

Allegations concerning STISSS

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

CASE NO. 3008

DEFINITIVE REPORT

**Complaint against the Government of El Salvador
presented by
the Union of Workers of the Ministry of Finance (SITRAMHA)**

Allegations: Threat of mass dismissals as a result of a work stoppage at the Ministry of Finance

231. The complaint is contained in a communication from the Union of Workers of the Ministry of Finance (SITRAMHA) dated 10 December 2012.
232. In view of the Government's lack of response despite the time elapsed since the submission of the complaint, at its March 2014 meeting [see 371st Report, para. 6] the Committee made an urgent appeal to the Government and brought to its attention that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body at its 184th Session, it could present a report on the substance of the case at its next meeting even if it had not received the information or observations from the Government in due time. To date, no response has been received from the Government.
233. El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

234. In its communication dated 10 December 2012, SITRAMHA alleges that on 25 July 2011, at an extraordinary meeting of its general assembly, the union authorized a nationwide work stoppage for the whole of the Ministry of Finance from 26 to 29 June and from 2 to 3 July 2011. The complainant adds that on 1, 2 and 3 July 2012, the President of El Salvador made threats on television through statements made in the press (the complainant provided newspaper clippings, articles and a DVD) to conduct large-scale dismissals of the participants in the work stoppage – 90 per cent of the 2,900 employees of the Ministry of Finance.
235. SITRAMHA adds that, on 3 July 2012, an announcement of a job fair was published, in collaboration with the Ministry of Labour, with a view to replacing the Ministry of Finance staff who were supporting the work stoppage.
236. On 4, 5 and 6 July, many people came to the offices of the Ministry of Labour of El Salvador aspiring to be part of the large-scale recruitment by the Ministry of Finance to replace the employees participating in the work stoppage.
237. The complainant sends a certified copy of the national newspaper wherein it is stated that, on 5 July 2012, the Legislative Assembly approved a decree entitled “Special temporary arrangements for foreign trade operations for a period of 30 days”, authorizing a contingency plan prepared by the Directorate General of Customs of the Ministry of Finance during the work stoppage. The draft decree was submitted to the President’s office and provided for the mass dismissal of the workers who participated in the stoppage. However, in the final version of the decree of the same name (Decree No. 56), which was approved by the Legislative Assembly on 5 July 2012, the articles which threatened the job security of the Ministry of Finance workers who participated in the work stoppage were removed.
238. Lastly, SITRAMHA states that it is presenting the complaint in order to prevent acts which pose a threat to the union members and freedom of association from being contemplated in the future.

B. The Committee's conclusions

239. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the information requested, although being invited to do so by means of an urgent appeal at the Committee's March 2014 meeting. The Committee requests the Government to be more cooperative in the future.*
240. *Under these circumstances, and in accordance with the applicable procedural rules [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.*
241. *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, while the procedure protects governments from unreasonable accusations, governments will in turn recognize the importance of formulating, for the purposes of an objective examination, detailed replies concerning allegations made against them.*

242. The Committee observes that in the present case the complainant alleges that, after a nationwide work stoppage was declared and carried out at all workplaces of the Ministry of Finance from 26 to 29 June and 2 to 3 July 2011, the President of El Salvador made statements to the media threatening mass dismissals of the participants. According to the allegations, the authorities published an advertisement for a job fair with a view to replacing the participants in the work stoppage en masse and the Legislative Assembly prepared a draft decree which provided for the mass dismissal of the said workers, which was submitted to the President's office; ultimately, however, those articles in the draft which threatened the job security of the workers in question were removed from the legislative decree (No. 56) approved by the Legislative Assembly.
243. The Committee notes that the complainant states that its intention is to prevent acts such as those described in the complaint from happening in the future.
244. The Committee recalls generally the principle that dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy; the competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such dismissals involve [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 674] and that dismissal threats for undertaking trade union activities constitute serious acts contrary to freedom of association principles. The Committee observes nonetheless that the complaint shows that the threatened large-scale dismissal of strikers did not in fact materialize.

The Committee's recommendation

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

CASE NO. 3013

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

Complaint against the Government of El Salvador presented by the Trade Union of Workers in the Tourism, Hotel and Allied Industries (STITHS)

***Allegations: Refusal of the Ministries of the
Economy and Finance to approve a collective
agreement***

246. The complaint is contained in a communication from the Trade Union of Workers in the Tourism, Hotel and Allied Industries (STITHS) dated 16 November 2012.
247. At its March 2014 meeting [see 371st Report, para. 6], since there had been no reply from the Government, despite the time that had elapsed since the presentation of the complaint, the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body at its 184th Session, it could present a report on the substance of the case

at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any information.

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

A. The complainant's allegations

249. In its communication of 16 November 2012, the STITHS alleges that, in March 2012, it signed a collective agreement with the Salvadorian Tourism Institute (ISTU), which included a new version of the clause "financial compensation for the voluntary retirement of ISTU workers", which considers two ways of paying the abovementioned financial compensation: (a) with Government funds; or (b) with its own resources, as, in accordance with the law governing the ISTU, that institute enjoys administrative, budgetary and financial autonomy. The text of the collective agreement was submitted to the Ministry of Tourism and the Ministry of Finance for approval on 12 April 2012, in accordance with section 287 of the Labour Code.
250. The complainant organization adds that, on 5 June 2012, the President of the ISTU Board of Directors, anticipating the Ministry of Finance's unfavourable opinion in respect of the abovementioned clause of the collective agreement, informed the Deputy Finance Minister of the decision on point 7, taken during ordinary meeting No. 12/2012 of the ISTU Executive Committee on 27 June 2012, at which the members of the Executive Committee agreed that, in the event of the Ministry of Finance issuing an unfavourable opinion in respect of the payment of financial compensation for voluntary retirement for the tax years after 2012, the ISTU would use its own funds to cover the benefit in question, thereby allaying any concerns over the availability of adequate resources.
251. Nevertheless, the complainant organization states that, on 17 July 2012, the Finance Minister issued the following opinion: "... A legal and financial examination of the collective labour agreement in question was carried out in accordance with the abovementioned legal provision and has shown that the institution in question possesses the financial and budgetary resources to cover the cost entailed by the agreement signed between the Salvadorian Tourism Institute and the Trade Union of Workers in the Tourism, Hotel and Allied Industries; this fact notwithstanding and in accordance with the guidelines issued by the Office of the President of the Republic under Executive Decree No. 78 of 11 April 2012, which sets out the savings and austerity policy for the public sector in 2012, published in *Official Journal* No. 66, volume 395, on 12 April 2012; this ministerial office issues an unfavourable opinion ...".
252. In this regard, the complainant organization states that when the Executive Committee of the ISTU and the STITHS negotiated the collective agreement on 16 and 21 March 2012, and, prior to signing it on 12 April 2012, Executive Decree No. 78 of 11 April 2012, which sets out the savings and austerity policy for the public sector, published in *Official Journal* No. 66, volume 395, on 12 April 2012, was not yet valid, as it only entered into force eight days after its publication in the *Official Journal*. In conclusion, it appears that the Executive Decree was applied retroactively to the detriment of the workers of ISTU.
253. The complainant organization states that, after the Ministry of Finance had issued its unfavourable opinion, the Director of the ISTU sent a memorandum to the Deputy Finance Minister on 27 August 2012, informing him that the ISTU Executive Committee had been informed of the unfavourable opinion issued by the Ministry of Finance, whereby it did not approve the collective labour agreement and that, in view of this fact, a decision was taken

on point 7 at ordinary meeting No. 15/2012 of the ISTU Executive Committee on 10 August 2012, which stipulated that the collective labour agreement would enter into force as of 1 January 2013.

254. The complainant organization highlights that its right to bargain collectively has been infringed, despite it having presented two alternatives to avoid violating the guidelines issued under the savings and austerity policy for the public sector set out in Executive Decree No. 78. Indeed, the ISTU and the STITHS agreed that the ISTU's own funds would be used to pay the abovementioned benefit and that the abovementioned collective agreement would enter into force on 1 January 2013 (that is, when the austerity policy came to an end).
255. The complainant organization recalls that, in a previous case relating to El Salvador [see 353rd Report, March 2009, Case No. 2615] concerning the violation of a collective agreement clause on regrading and wage adjustment, the Committee requested the Government to "guarantee respect for the principles referred to in the conclusions as regards observance of collective agreements and consultation with trade unions on matters affecting the workers' interests ..." and to "take steps to amend section 287 of the Labour Code so that collective agreements that have been concluded and signed by the parties in an autonomous official institution do not have to be submitted for approval by the Ministry of Tourism, which itself has to seek the opinion of the Ministry of Finance; in this regard, the Committee regrets the fact that the collective agreement negotiated by the complainant trade union and the ISTU could not be applied for that reason". The Committee also drew the legislative aspects of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations, as section 278 of the Labour Code provides that "to be valid, a collective agreement signed with an autonomous official institution shall first be approved by the ministry concerned, after the Ministry of Finance has given its opinion. The official autonomous institution which has concluded the collective agreement shall forward it to the Court of Auditors of the Republic" [see 353rd Report, Case No. 2615 (El Salvador), para. 872].

B. The Committee's conclusions

256. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's allegations even though it has been requested several times, including through an urgent appeal in March 2014. The Committee requests the Government to be more cooperative in the future.*
257. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
258. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, in turn, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].*
259. *The Committee notes that, in the present case, the complainant organization alleges that, despite having negotiated and signed a collective agreement in March–April 2012, the Ministry of Finance subsequently issued an unfavourable opinion in respect of the clause "financial compensation for the voluntary retirement of the ISTU workers", even though it*

had been confirmed that the institution in question possessed the requisite financial and budgetary resources to cover the cost entailed by the collective agreement. The Committee notes that the opinion issued by the Ministry of Finance, contained in an official memorandum, is based on the guidelines issued under the savings and austerity policy for the public sector in 2012 (set out in Executive Decree No. 78).

260. Since the Government has not replied, the Committee wishes to highlight that the examination of collective agreement clauses with a financial impact by the financial authorities should take place during the collective bargaining process and not, as has occurred in this, and in other cases brought before the Committee, after the collective agreement has been signed by the parties, as this is incompatible with the principle of free and voluntary collective bargaining and the principle according to which “agreements should be binding on the parties” [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 939]. The Committee observes that the issues raised in this complaint are similar to those raised in the framework of Case No. 2986 and requests the Government to guarantee respect for these principles in the future and urges it once again to take steps to amend section 287 of the Labour Code so that collective agreements that have been concluded and signed by the parties in an autonomous official institution, such as the ISTU, do not have to be submitted for approval by the Ministry of Tourism, which itself has to seek the opinion of the Ministry of Finance.
261. In this regard, the Committee regrets that the collective agreement negotiated by the complainant organization and the ISTU has not been approved, particularly in view of the parties’ willingness to apply the clause with a financial impact from 2013 (when the Government’s austerity policy comes to an end), which the Ministry of Finance rejected. The Committee requests the Government to take steps to bring the parties and the authorities in question together with a view to overcoming this situation, and to keep it informed of any developments in that regard.
262. Lastly, the Committee refers the legislative aspect of this case to the Committee of Experts on the Application of Conventions and Recommendations.

The Committee’s recommendations

263. *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 guarantee respect for the principles referred to in the conclusions in the future and urges it once again to take steps to amend section 287 of the Labour Code so that collective agreements that have been concluded and signed by the parties in an autonomous official institution, such as the ISTU, do not have to be submitted for approval by the Ministry of Tourism, which itself has to seek the opinion of the Ministry of Finance.*
 - (b) *The Committee once again refers the legislative aspect of this case to the Committee of Experts on the Application of Conventions and Recommendations.*
 - (c) *The Committee regrets that the collective agreement negotiated by the complainant organization and the ISTU has not been approved and requests the Government to take steps to bring the parties and the authorities in*

question together with a view to overcoming this situation, and to keep it informed of any developments in that regard.

CASE NO. 2684

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

Complaints against the Government of Ecuador presented by

- **the National Federation of Workers of the State
Petroleum Enterprise of Ecuador (FETRAPEC)**
- **Public Services International (PSI)**
- **the Single Trade Union Organization of Health
Ministry Workers (OSUNTRAMSA)**
- **the United Workers' Front (FUT)**
- **the Ecuadorian Confederation of Free Trade Union
Organizations (CEOSL)**
- **the Confederation of Workers of Ecuador (CTE) and**
- **the Ecuadorean Confederation of United Workers'
Organizations (CEDOCUT)**

***Allegations: Legislation contrary to trade union
independence and the right to collective
bargaining; dismissals of trade unionists***

264. The Committee last examined this case at its March 2013 meeting, when it presented an interim report to the Governing Body [see 367th Report, approved by the Governing Body at its 317th Session (2013), paras 735–745].

265. The Government sent its observations in a communication dated 17 December 2013.

266. 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. Previous examination of the case

267. In its previous examination of the case in March 2013, the Committee made the following recommendations [see 367th Report, para. 745]:

- (a) The Committee again requests the Government to take the necessary measures to ensure that the trade union dues are immediately returned to the workers affiliated with FETRAPEC and to keep it informed in that regard. Moreover, the Committee again requests the Government to encourage without delay the initiation of discussions between FETRAPEC and the enterprise with a view to recognition of the trade union organization.
- (b) As regards the dismissal of the four trade union officials (Mr Edgar de la Cueva, Mr Ramiro Guerrero, Mr John Plaza Garay and Mr Diego Cano Molestina), the Committee again requests the Government to encourage the initiation of discussions

between FETRAPEC and the enterprise with a view to the reinstatement of these union officials.

- (c) As regards the alleged mass dismissals that took place at the E.P. PETROECUADOR enterprise in 2009 and 2010, the Committee urges the Government to send without delay detailed information on these allegations and its observations on the alleged anti-union nature of the dismissals.
- (d) As regards the alleged violation of the collective agreement in force regarding compensation owed to workers who voluntarily ended their employment at the aforementioned enterprise, the Committee, without calling into question the statute of limitations that applies to the judicial proceedings referred to by the Government, highlights the importance of the issues raised and again requests the Government to promote dialogue between the Confederation of Workers of Ecuador (CTE) and the enterprise with a view to finding a solution to this dispute.
- (e) As regards the alleged dismissals at the Unidad Eléctrica de Guayaquil enterprise and the ongoing criminal proceedings against the workers, the Committee deeply regrets that the Government has not responded and urges it to do so without delay.
- (f) The Committee again requests the Government to annul Ministerial Orders Nos 00080 and 00155A and their effects, since they seriously violate the principle of free and voluntary collective bargaining established by Convention No. 98, and to indicate whether Constituent Resolution No. 008 is compatible with an exclusively judicial control of the possibly abusive nature of certain clauses of collective agreements in the public sector. The Committee again requests the Government to continue to promote dialogue with the representative trade union organizations and to keep it informed of developments, particularly as regards meetings with the union representatives and the work of the National Labour Council (CNT).

B. The Government's reply

268. In its communication of 17 December 2013, the Government sent its reply in relation to the recommendations made by the Committee. As to recommendation (a), the Government states that the works councils of the now defunct subsidiaries of E.P. PETROECUADOR were members of FETRAPEC and that those works councils paid contributions directly to the Federation. The workers only paid contributions to the works councils corresponding to their subsidiary and those works councils are currently in possession of the union dues in question. Therefore, having provided this information, the Ministry of Labour Relations takes note of the recommendation and undertakes to adopt the necessary measures to ensure that the union dues are returned to the members of FETRAPEC, and to inform the Committee of any developments in that regard. Moreover, the Government adds that, currently, the works council that is recognized and accredited in accordance with the Ecuadorian legislation in force is the Works Council of the Public Hydrocarbon Enterprise PETROECUADOR (CETRAPEP), which was approved by Ministerial Order No. 01336 of 20 August 2013. The Government highlights that the previous works councils that made up FETRAPEC, which belonged to the former subsidiaries of E.P. PETROECUADOR, have forfeited their legal personality by failing to renew their statutes when their employer became defunct, in accordance with the second transitory provision of Decree No. 315. The Government states that, in the light of these facts, FETRAPEC is not currently a representative organization, nor does it have legal personality.

269. As to recommendation (b), the Government states that the employment relationship of public officials who are subject to the regulations laid down in the Labour Code may be terminated by means of unfair dismissal, which is provided for in and regulated by section 188 of the Labour Code, which applies to workers in both the public and private sectors without distinction. Trade union members and officials do not fall under a special category of workers who enjoy privileges that other workers do not, just as unfair dismissal is not used to harm members of trade union movements. The Government states that, in

Ecuador, a dismissal is only illegal when the worker is not compensated in accordance with the law, for which reason, no enterprise that has fulfilled the obligations set out in section 188 of the Labour Code is obliged to reinstate dismissed workers.

270. As to recommendation (c), the Government states that all the dismissed workers, of whom only a tiny percentage were trade union officials, were duly compensated in accordance with section 188 of the Labour Code. The Government reaffirms that none of the dismissals was anti-union in nature, as the Labour Code applies to all workers without distinction, and that trade union members and officials do not enjoy privileges that other workers do not, just as unfair dismissal is not used to harm members of trade union movements. Ecuadorian legislation does not consider the unilateral termination of an employment relationship to be illegal, provided that the worker is duly compensated. Furthermore, it should be noted that the current Government has approved three times more trade union organizations than other governments and that the proposed new Labour Code, which has been developed with the technical assistance of the ILO, guarantees the right to freedom of association by branch without interference from employers. These facts demonstrate the current Government's wholehearted support for the trade union movement in Ecuador.
271. As to recommendation (d) on the alleged violation of the collective agreement in force regarding compensation owed to workers who voluntarily ended their employment at the aforementioned enterprise, the Government states that the ruling of the National Court establishes that the workers who elected to end their employment voluntarily freely accepted their dismissal and signed the relevant severance agreement, thereby accepting the severance pay provided for therein. The Government indicates that, in the light of these facts, promoting dialogue between the enterprise and the workers as an alternative administrative measure to resolve the conflict is no longer necessary, given that the ruling of the national court has resolved the conflict through the judicial system, which has followed the correct procedure in accordance with the Constitution and the law.
272. As to recommendation (e) on the alleged dismissals at the Unidad Eléctrica de Guayaquil enterprise and the ongoing criminal proceedings against the workers, the Government indicates that under Decree No. 1786, issued by the President of the Republic and published in *Official Journal* No. 625 of 2 August 2009, the then Board of the Temporary Electrical Power Administration of Guayaquil became the Unit for the Generation, Distribution and Commercialization of Electrical Energy of Guayaquil (Unidad Eléctrica de Guayaquil), which, according to article 1 of the aforementioned Decree, comes under the authority of the Executive, which is part of the central public administration. In the light of these facts and with regard to the alleged dismissals, the Government states that, on the morning of Wednesday 18 November 2009, the aforementioned Unidad Eléctrica de Guayaquil workers arbitrarily stopped work for no legitimate reason and began shouting slogans against the authorities of the enterprise. According to the Government, it became clear from the numerous press articles on the incident that the workers had even resorted to the unauthorized use of automobiles to block the entrances to the enterprise's premises in order to carry out the stoppage. It should be noted that those automobiles are public property and should only be used for work purposes. The Government states that, in this way, the workers endangered the safety and physical integrity of all the persons present at that time by committing acts that are expressly prohibited by section 46, paragraphs (a) and (b), of the Labour Code. In the light of these facts and as is reflected in the documentation in the possession of the Guayaquil Department of the Ministry of Labour Relations, the dismissals were approved in accordance with the third reason listed in section 172 of the Labour Code, which led the labour inspector, who was acting on behalf of the administrative authority and using the powers conferred on him by section 545, paragraph 5, of the Labour Code, to approve the dismissal of the workers in question.

273. As to recommendation (f), the Government indicates that Ministerial Order No. 00080, published in *Official Journal* No. 394 of 1 August 2008, was issued with the aim of automatically adjusting the clauses of the collective agreements in question to ensure their compliance with the provisions of Constituent Resolution No. 008. The aforementioned ministerial order is understood as being an instrument for regulating the transition from the former collective agreements in place prior to Constituent Resolution No. 008 to ensure their compliance with its provisions. Therefore, the ministerial order has served its purpose, is final and complies with Ecuadorian legislation without violating the principle of free and voluntary collective bargaining enshrined in Convention No. 98 for the reasons detailed below. Ecuador respects the principles enshrined in Convention No. 98 and has on no occasion prohibited free collective bargaining, rather it has regularized such bargaining so that it takes place within the framework of established parameters, which are in keeping with the limitations of the State of Ecuador, its fiscal budget and its constitutional principles, such as those established in article 286 of the Constitution, which provides that: “At all levels of Government, public funds shall be managed in a sustainable, responsible and transparent manner and shall seek to achieve economic stability. Permanent expenditure shall be funded with permanent sources of income. Permanent expenditure on health care, education and the judicial system shall take priority and, in exceptional circumstances, shall be funded with non-permanent sources of income”. In this connection, the Government also refers to Ministerial Order No. 00155A, which was published in *Official Journal* No. 455 of 14 October 2008 and lays down the regulations for revising collective labour agreements, in accordance with the provisions of Constituent Resolution No. 008, but which does not prevent free collective bargaining, provided that it takes place within the established parameters and is in keeping with the principle enshrined in article 286 of the Constitution and the principles of equality and transparency. Ministerial Order No. 00155A also seeks to ensure equal pay for equal work in the public sector by respecting differences but not excesses and privileges, which cannot be sustained by the budget of the State of Ecuador and which undermine the principle of equity. Thus, Ministerial Order No. 00155A is also final and complies with Ecuadorian legislation.

274. As to the Committee’s request for the Government to indicate whether Constituent Resolution No. 008 is compatible with an exclusively judicial control, the Government states that the fourth transitory provision of Constituent Resolution No. 008 provides that the Executive that shall be responsible for establishing the criteria that shall govern the collective labour agreements of all public sector institutions, and that the third transitory provision of the regulations governing the application of Constituent Resolution No. 008 provides that the Ministry of Labour shall lay down the regulations and procedures for revising the aforementioned collective labour agreements and that “judges, courts and the administrative authorities shall enforce this provision”.

C. The Committee’s conclusions

275. *The Committee recalls that the allegations that were still pending in this case related to union dues being returned to the workers who are members of FETRAPEC; to the adoption of legislation that was contrary to trade union independence and the right to bargain collectively; and to the dismissal of trade unionists [see 367th Report, para. 745].*

Recommendation (a)

276. *As to the recommendation requesting the Government to take the necessary measures to ensure that the trade union dues are immediately returned to the workers who are members of FETRAPEC, the Committee takes note of the Government’s statement to the effect that the Ministry of Labour Relations has taken note of the recommendation and undertakes to adopt the necessary measures to ensure that the union dues are returned to*

the members of FETRAPEC, and to inform the Committee of the progress made towards that end. The Committee requests the Government to keep it informed of any developments in that regard.

277. As to the recommendation requesting the Government to encourage without delay the initiation of discussions between FETRAPEC and the enterprise with a view to recognizing the trade union organization, the Committee takes note of the Government's statement to the effect that: (1) currently, the works council that is recognized and accredited in accordance with Ecuadorian legislation is CETRAPEP, which was approved by Ministerial Order No. 01336 of 20 August 2013; (2) the previous works councils that made up FETRAPEC, which belonged to the former subsidiaries of E.P. PETROECUADOR, have lost their legal personality by failing to renew their statutes when their employer became defunct, in accordance with the second transitory provision of Decree No. 315; and (3) FETRAPEC is not currently a representative organization, nor does it have legal personality. The Committee takes note of this information and will not pursue the examination of this allegation unless the organization in question sends up-to-date information to the contrary.

Recommendation (b)

278. As to the recommendation requesting the Government to encourage the initiation of discussions between FETRAPEC and the enterprise with a view to reinstating the trade union officials, Edgar de la Cueva, Ramiro Guerrero, John Plaza Garay and Diego Cano Molestina, the Committee takes note of the Government's statement to the effect that: (1) the employment relationship of public officials subject to the regulations laid down in the Labour Code may be terminated without cause, which is provided for in and regulated by section 188 of the Labour Code, which applies to workers in both the public and private sectors without distinction; (2) trade union members and officials do not fall under a special category of workers who enjoy privileges that other workers do not, just as dismissal without cause is not used to harm members of trade union movements; and (3) in Ecuador, a dismissal is only illegal when the worker is not compensated in accordance with the law, for which reason no enterprise that has fulfilled the obligations set out in section 188 of the Labour Code is obliged to reinstate dismissed workers. In this regard, the Committee notes with concern that national legislation does not grant specific protection against anti-union dismissals and that there is no obligation to motivate the dismissals occurring in this context. In this respect, the Committee recalls that it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities. The Committee also recalls that in a case in which trade union leaders could be dismissed without an indication of the motive, the Committee requested the Government to take steps with a view to punishing acts of anti-union discrimination and to making appeal procedures available to the victims of such acts (see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 791 and 807). Based on the abovementioned principles, the Committee requests the Government to take the necessary measures, in full consultation with the social partners, to amend the legislation so as to guarantee specific protection against anti-union discrimination including anti-union dismissals and to establish sufficiently dissuasive sanctions. In addition, observing that the Government did not indicate the grounds on which the trade union leaders concerned have been dismissed, the Committee once again requests the Government to promote without delay the commencement of discussions between FETRAPEC and the company with a view to the reinstatement of the abovementioned trade union leaders. The Committee requests the Government to keep it informed on these matters.

Recommendation (c)

279. As to the recommendation urging the Government to send, without delay, detailed information on the alleged mass anti-union dismissals that took place at the E.P. PETROECUADOR enterprise in 2009 and 2010, the Committee notes that the Government: (1) states that all the dismissed workers, of whom only a tiny percentage were trade union officials, were duly compensated in accordance with section 188 of the Labour Code; (2) reaffirms that none of the dismissals was anti-union in nature, as the Labour Code applies to all workers without distinction, that trade union members and officials do not enjoy privileges that other workers do not, just as unfair dismissal is not used to harm members of trade union movements, and that Ecuadorian legislation does not consider the unilateral termination of an employment relationship to be illegal, provided that the worker is duly compensated; and (3) states that the current Government has approved three times more trade union organizations than other governments and that it should be noted that the proposed new Labour Code, which has been developed with the technical assistance of the ILO, guarantees the right to freedom of association by branch without interference from employers. According to the Government, these facts demonstrate its wholehearted support for the trade union movement in Ecuador. In this regard, the Committee deeply deplores the fact that, despite the time that has elapsed, the Government has not sent the requested information, particularly on the alleged anti-union nature of the mass dismissals, having limited itself to emphasizing the fact that the dismissed workers and trade union members were compensated, and therefore urges it to take the necessary measures to ensure that an independent investigation is conducted into the allegation and to keep it informed of the outcome.

Recommendation (d)

280. As to the alleged violation of the collective agreement in force regarding compensation owed to workers who voluntarily ended their employment at the aforementioned enterprise and the Committee's recommendation requesting the Government, without calling into question the statute of limitations that applies to the judicial proceedings, to promote dialogue between the Confederation of Workers of Ecuador (CTE) and the enterprise with a view to finding a solution to this dispute, the Committee takes note of the Government's statement to the effect that: (1) the ruling of the National Court establishes that the workers who elected to end their employment voluntarily freely accepted their dismissal and signed the relevant severance agreement, thereby accepting the severance pay provided for therein; (2) in the light of these facts, promoting dialogue between the enterprise and the workers as an alternative administrative measure to resolve the conflict is no longer necessary, given that the ruling of the National Court has resolved the conflict through the judicial system, which has followed the correct procedure in accordance with the Constitution and the law. The Committee takes note of this information.

Recommendation (e)

281. As to the alleged dismissals at the Unidad Eléctrica de Guayaquil enterprise and the ongoing criminal proceedings against the workers, the Committee takes note of the Government's statement to the effect that: (1) under Decree No. 1786, issued by the President of the Republic and published in Official Journal No. 625 of 2 August 2009, the then Board of the Temporary Electrical Power Administration of Guayaquil became the Unit for the Generation, Distribution and Commercialization of Electrical Energy of Guayaquil (Unidad Eléctrica de Guayaquil), which, according to article 1 of the aforementioned Decree, comes under the authority of the Executive, which is part of the central public administration; (2) in the light of these facts and with regard to the alleged dismissals, the Government states that, on the morning of Wednesday 18 November 2009,

the aforementioned Unidad Eléctrica de Guayaquil workers arbitrarily stopped work for no legitimate reason and began shouting slogans against the authorities of the enterprise; (3) the workers had even resorted to the unauthorized use of automobiles to block the entrances to the enterprise's premises in order to carry out the stoppage; it should be noted that those automobiles are public property and should only be used for work purposes; (4) in this way, the workers endangered the safety and physical integrity of all the persons present at that time by committing acts that are expressly prohibited by section 46, paragraphs (a) and (b), of the Labour Code (paragraphs (a) and (b) of this section prohibit workers from endangering their own safety, that of their fellow workers or that of other persons, as well as that of establishments, workshops and places of work; and from taking work tools, raw materials and manufactured products from factories, workshops, enterprises or establishments without the permission of the employer); and (5) in the light of these facts and as is reflected in the documentation in the possession of the Guayaquil Regional Department of the Ministry of Labour Relations, the dismissals were approved in accordance with the third reason listed in section 172 of the Labour Code (the third reason refers to how it is possible for an employer to terminate an employment contract, with prior approval, on grounds of dishonesty or immoral conduct), which led the labour inspector, who was acting on behalf of the administrative authority and using the powers conferred on him by the law, to approve the dismissal of the workers in question. The Committee takes note of the information on the dismissals but notes that it does not mention the status of the criminal proceedings. The Committee trusts that the ongoing criminal proceedings will be concluded in the near future and requests the Government to keep it informed of their outcome.

Recommendation (f)

282. *As to the Committee's recommendation requesting the Government to annul Ministerial Orders Nos 00080 and 00155A and their effects, since they seriously violate the principle of free and voluntary collective bargaining enshrined in Convention No. 98, the Committee takes note of the Government's statement to the effect that: (1) Ministerial Order No. 00080, published in Official Journal No. 394 of 1 August 2008, was issued with the aim of automatically adjusting the clauses of the collective agreements in question to ensure their compliance with the provisions of Constituent Resolution No. 008; (2) the aforementioned ministerial order is understood as being an instrument for regulating the transition from the former collective agreements in place prior to Constituent Resolution No. 008 to ensure their compliance with its provisions; the ministerial order has therefore served its purpose, is final and complies with Ecuadorian legislation without violating the principle of free and voluntary collective bargaining enshrined in Convention No. 98; (3) Ecuador respects the principles enshrined in Convention No. 98 and has on no occasion prohibited free collective bargaining, rather it has regularized it so that it takes place within the framework of established parameters, which are in keeping with the limitations of the State of Ecuador, its fiscal budget and its constitutional principles, such as those enshrined in article 286 of the Constitution, which provides that: "At all levels of Government, public funds shall be managed in a sustainable, responsible and transparent manner and shall seek to achieve economic stability. Permanent expenditure shall be funded with permanent sources of income. Permanent expenditure on health care, education and the judicial system shall take priority and, in exceptional circumstances, shall be funded with non-permanent sources of income"; (4) Ministerial Order No. 00155A, which was published in Official Journal No. 455 of 14 October 2008 and lays down the regulations for revising collective labour agreements, in accordance with the provisions of Constituent Resolution No. 008, does not prevent free collective bargaining, provided that it takes place within the established parameters and is in keeping with the principle enshrined in article 286 of the Constitution and the principles of equality and transparency. Ministerial Order No. 00155A also seeks to ensure equal pay for equal work in the public sector by respecting differences but not excesses and privileges, which cannot*

be sustained by the budget of the State of Ecuador and which undermine the principle of equity; and (5) Ministerial Order No. 00155A is also final and complies with Ecuadorian legislation. The Committee deeply regrets that, despite the years that have elapsed, the Government has not taken the necessary measures requested by the Committee. The Committee notes that this matter has been examined by the Committee of Experts on the Application of Conventions and Recommendations and draws its attention to the legislative aspects of these allegations.

283. *As to the Committee's request for the Government to indicate whether the Constituent Resolution No. 008 is compatible with an exclusively judicial control of the possibly abusive nature of certain clauses of collective agreements in the public sector, the Committee takes note of the Government's statement to the effect that the third transitory provision of the constituent resolution provides that the Ministry of Labour shall lay down the regulations and procedures for revising the aforementioned collective labour agreements and that "judges, courts and the administrative authorities shall enforce this provision". The Committee takes note of this information and stresses that all regulations and procedures in that sphere should be developed in close consultation with the most representative workers' and employers' organizations. The Committee requests the Government to ensure the consultation of the workers' and employers' organizations on the regulations and procedures of the Ministry of Labour.*

284. *As to the Committee's request for the Government to continue to promote dialogue with the representative trade union organizations and to keep it informed of developments, particularly as regards meetings with the union representatives and the work of the CNT, the Committee regrets that the Government has not sent its observations on this matter and urges it to take all the necessary steps to give effect to this recommendation. The Committee requests the Government to keep it informed of any developments in this regard.*

The Committee's recommendations

285. *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 any developments regarding the return of the union dues to the members of FETRAPEC.*
- (b) The Committee requests the Government to take the necessary measures, in full consultation with the social partners, to amend the legislation as specified in its conclusions so as to guarantee specific protection against anti-union discrimination including anti-union dismissals and to establish sufficiently dissuasive sanctions against such acts. In addition, the Committee once again requests the Government to promote without delay the commencement of discussions between FETRAPEC and the company with a view to the reinstatement of the trade union leaders Edgar de la Cueva, Ramiro Guerrero, John Plaza Garay and Diego Cano Molestina. The Committee requests the Government to keep it informed on these matters.*
- (c) As regards the alleged mass anti-union dismissals that took place in the E.P. PETROECUADOR enterprise in 2009 and 2010, the Committee deeply deplores the fact that, despite the time that has elapsed, the Government has*

not sent the requested information, particularly on the alleged anti-union nature of the mass dismissals, having limited itself to emphasizing the fact that the dismissed workers and trade union members were compensated, and therefore urges it to take the necessary measures to ensure that an independent investigation is conducted into the allegation and to keep it informed of the outcome.

- (d) The Committee requests the Government to keep it informed of the outcome of the ongoing criminal proceedings against the workers who participated in a work stoppage in the Unit for the Generation, Distribution and Commercialization of Electrical Energy of Guayaquil (Unidad Eléctrica de Guayaquil) enterprise.*
- (e) The Committee urges the Government to annul Ministerial Orders Nos 00080 and 00155A and their effects, since they seriously violate the principle of free and voluntary collective bargaining enshrined in Convention No. 98. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*
- (f) The Committee requests the Government to ensure the consultation of the workers' and employers' organizations on the regulations and procedures of the Ministry of Labour.*
- (g) The Committee urges the Government to continue to promote dialogue with the representative trade union organizations, particularly as regards meetings with the union representatives and the work of the CNT, and to keep it informed of any developments in that regard.*

CASE NO. 2869

INTERIM REPORT

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

Allegations: dismissal of trade union leaders following the re-establishment of the Trade Union of Gas Bottling, Transport, Distribution and Maintenance Workers of the companies belonging to the TOMZA Group

286. The Committee last examined this case at its March 2013 meeting, when it presented an interim report to the Governing Body [see 367th Report, approved by the Governing Body at its 317th Session (March 2013), paras 774–783].

287. The Government sent partial observations in a communication dated 21 May 2013.

- 288.** 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

- 289.** In its previous examination of the case in March 2013, the Committee regretted that, despite the time elapsed, the Government had not provided any information on the allegations, and it made the following recommendations [see 367th Report, para. 783]:

- (a) The Committee deeply regrets to note that, despite several requests and an urgent appeal, the Government has failed to provide any information on the allegations.
- (b) While highlighting the seriousness of the allegations and recalling that no one should be dismissed or subject to prejudicial measures for carrying out legitimate activities, such as the re-establishment of a trade union, the Committee expects the Government to ensure that the companies in question have complied with the abovementioned reinstatement order and to keep it informed in this regard.

B. The Government's reply

- 290.** In its communication dated 21 May 2013, the Government submits information on the various legal proceedings in relation to the acts alleged in this complaint. It first refers to the list of proceedings pending resolution: (i) collective social and economic action No. 1088-2011-131, filed by the Trade Union of Gas Bottling, Transport, Distribution and Maintenance Workers, in respect of which the legal argument put forward by the enterprise, Gas Metropolitano, Ltd. (hereafter the enterprise), was partially upheld, resulting in the annulment of the previously ordered provisional measures. The collective action led to *amparo* proceedings which are currently pending before the Third Chamber of the Labour and Social Welfare Appeals Court; (ii) the proceedings filed by Mr José Daniel Mejía and Mr Kelvin Rolando Argueta Colindrez are awaiting the resolution of the appeal lodged before the Third Chamber of the Labour and Social Welfare Appeals Court; (iii) the proceedings filed by Mr Elgar Leonel Barrios Bautista are awaiting referral to a higher court on an appeal lodged by the defendant against the reinstatement order; and (iv) the application for reinstatement filed by Mr Selvin Gildardo Hernández Zuñiga is awaiting the resolution of the appeal lodged by the enterprise before the Third Chamber of the Labour and Social Welfare Appeals Court.

- 291.** The Government also indicates that the workers Mr Félix Manuel Ixen Aju and Mr Aniceto Amado Sarat Álvarez, were reinstated on 4 September 2012. Lastly, the Government provides a list of proceedings that have been shelved. In two cases the complainants withdrew their complaints (the action filed by Mr Daniel Avisai Vivar Garcia and the action filed by Mr Bartolo Cabrera Carranza and Mr José Víctor Iguardia Revolorio). In two other cases, including the proceedings in which a reinstatement order had been issued at first instance in respect of nine trade union leaders, the proceedings were shelved after the legal argument put forward by the enterprise in collective social and economic action No. 1088-2011-131 was upheld.

C. The Committee's conclusions

- 292.** *The Committee recalls that the case under examination refers to allegations of anti-union dismissals following the re-establishment of a trade union and the failure to implement a court reinstatement order. The Committee takes note of the Government's observations regarding the status of the various proceedings related to the acts alleged in this complaint. First, the Committee observes that two of the dismissed workers, Mr Félix*

Manuel Ixen Aju and Mr Aniceto Amado Sarat Álvarez, were reinstated on 4 September 2012. The Committee further notes that, as it may be seen from the appendices sent by the Government, the aforementioned workers filed their complaint on the day following their reinstatement. The Committee also observes that two proceedings were shelved following the workers' withdrawal of the corresponding complaints (Mr Daniel Avisai Vivar García, Mr Bartolo Cabrera Carranza and Mr José Víctor Iguardia Revolorio).

293. In addition, the Committee observes that two other judicial proceedings (the proceedings in which a reinstatement order had been issued at first instance in respect of nine trade union leaders, and the proceedings filed by Mr José Daniel Mejía and Mr Kelvin Rolando Argueta Colindrez) were shelved after the legal arguments put forward by the enterprise, Gas Metropolitano, Ltd, were upheld. The Committee notes that the Government has not provided copies of the court rulings upholding the legal arguments put forward by the enterprise, on the basis of which the abovementioned proceedings were shelved, or of the actual decisions to shelve the proceedings. Highlighting that in one of the proceedings shelved without its withdrawal by the complainant, a reinstatement order had been issued at first instance in respect of nine dismissed trade union leaders and that, in its previous examination of the case, the Committee had requested the Government to enforce that order, the Committee requests the Government to transmit the corresponding decisions as a matter of urgency and to provide all the necessary details regarding the grounds for shelving the abovementioned cases.
294. Lastly, the Committee notes that a number of judicial proceedings are still pending a final decision, including the collective social and economic action filed by the trade union and various reinstatement proceedings in respect of dismissed workers, which have been the subject of appeals. In this regard, the Committee takes special note of the proceedings filed by Mr Elgar Leonel Barrios Bautista, in which a reinstatement order was issued at first instance, and the reinstatement proceedings in respect of Mr Selvin Gildardo Hernández Zuñiga, which resulted in a ruling at first instance in favour of the worker.
295. The Committee notes that, three years after the acts alleged in this complaint, a significant number of proceedings filed by the dismissed workers are still pending a final decision and that, with the exception of two persons, the reinstatement orders issued at first instance have either been shelved or have been the subject of an appeal without the provisional implementation of the reinstatement orders, even though section 209 of the Labour Code of Guatemala provides that “Workers may not be dismissed for participating in the creation of a trade union” and that “In the event of failure to comply with this provision, the worker or workers in question shall be reinstated within twenty-four hours”. In this regard, the Committee recalls that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular, a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see **Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO**, fifth (revised) edition, 2006, para. 826]. The Committee also highlights that, in a case in which proceedings concerning dismissals had already taken 14 months, the Committee requested the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and emphasized 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]. In the light of the above, and recalling that under the Memorandum of Understanding signed with the Workers' group of the Governing Body of the ILO on 26 March 2013, following the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), presented under article 26 of the ILO Constitution, the

Government committed itself to developing “policies and practices to ensure the application of labour legislation, including ... timely and effective judicial procedures”, the Committee requests the Government to ensure that the pending judicial proceedings in relation to this case are concluded without further delay and, while awaiting the final judicial decisions, to ensure the immediate provisional reinstatement of the workers in respect of whom reinstatement orders that have not been shelved were issued at first instance. The Committee requests the Government to urgently inform it in this regard.

The Committee’s recommendations

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

- (a) Highlighting that in one of the two proceedings in relation to this case, which had been shelved without its withdrawal by the complainant, a reinstatement order had been issued at first instance in respect of nine dismissed trade union leaders and that, in its previous examination of the case, the Committee had requested the Government to enforce that order, the Committee requests the Government to transmit the corresponding decisions as a matter of urgency and to provide all the necessary details regarding the grounds for shelving the abovementioned cases.**
- (b) The Committee requests the Government to ensure that the pending judicial proceedings in relation to this case are concluded without further delay and, while awaiting the final judicial decisions, to ensure the immediate provisional reinstatement of the workers in respect of whom reinstatement orders that have not been shelved were issued at first instance. The Committee requests the Government to urgently inform it in this regard.**

CASE NO. 2967

INTERIM REPORT

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

Allegations: the complainant organization alleges that a number of provisions of the Criminal Code and the Labour Code, as well as a Ministerial Resolution, impede the free exercise of freedom of association; and that leaders and members of a trade union of municipal workers were the victims of anti-union dismissals

297. The complaint is contained in three communications dated 1 June 2012 from the Indigenous and Rural Workers’ Trade Union Movement of Guatemala (MSICG).

298. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case four times and has made three urgent appeals to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the requested information or comments had not been received in time [see 368th Report, para. 5; 370th Report, para. 6; and 371st Report, para. 6]. To date, the Government has not sent any information.
299. 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 complainant's allegations

300. In its three communications of 1 June 2012, the complainant organization alleges that:

- (i) a number of provisions of the Criminal Code (sections 256, 292, 294, 390 and 414) promote the criminalization of peaceful labour protests by laying down an excessively general and subjective characterization of offences such as obstructing public transport, stopping or disrupting the activities of enterprises that contribute to the economic development of the country and occupying buildings;
- (ii) several provisions of the Labour Code (sections 220(c), 223(d) and 226) relating to, inter alia, the motives for the dissolution of trade union organizations and the possibility of the labour administration imposing amendments to trade union statutes restrict the freedom of trade union organizations to establish their statutes independently, to organize themselves at the international level and to perform their social and political functions;
- (iii) Ministerial Resolution No. 126/2012, which lays down the “regulations governing the appointment of representatives and substitutes from workers’ and employers’ organizations to participate in national and international committees”, establishes criteria of representativeness which impede the exercise of freedom of association on the basis of the legitimacy recognized in Article 10 of ILO Convention No. 87 and which restrict the freedom of such organizations to elect freely their representatives;
- (iv) seventeen leaders and members of the Trade Union of Workers of the Municipality of Nuevo San Carlos in the Department of Retalhuleu were the victims of anti-union dismissals in May 2012 and the Ministry of Labour and Social Welfare did not intervene to halt this violation of freedom of association.

B. The Committee's conclusions

301. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's allegations, even though it has been requested several times, including through several urgent appeals, to present its comments and observations on this case.*
302. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to present a report on the substance of the case without being able to take account of the information that it had hoped to receive from the Government.*

303. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning the allegations brought against them [see First Report of the Committee, para. 31]. The Committee requests the Government to be more cooperative in the future.*
304. *The Committee notes that this case refers firstly to allegations that a number of provisions of the Criminal Code and the Labour Code, as well as a Ministerial Resolution, impede the exercise of freedom of association and, secondly, that 17 leaders and members of the Trade Union of Workers of the Municipality of Nuevo San Carlos in the Department of Retalhuleu were the victims of anti-union dismissals in May 2012 and the Ministry of Labour and Social Welfare did not intervene to halt these violations of freedom of association.*
305. *As to the legislative and regulatory provisions mentioned in the complaint, the Committee takes note of the concern expressed by the complainant organization that the provisions in question, inter alia, promote the criminalization and prohibition of peaceful labour protests and restrict the freedom of trade union organizations to establish their statutes independently, to organize themselves at the international level and to perform their social and political functions. Hence, recalling the importance of ensuring that domestic legislation complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions, and that the application of the legislation does not impede the exercise of freedom of association, the Committee requests the Government to send its observations on the legislative and regulatory provisions mentioned in the complaint without delay.*
306. *Also 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” [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 817], the Committee urges the Government to conduct an independent inquiry into the dismissals mentioned in the complaint without delay and, should it be found that the dismissals were anti-union in nature, to reinstate the workers concerned to their posts or, should this prove impossible, to pay them adequate compensation so as to constitute a sufficiently dissuasive sanction.*

The Committee’s recommendations

307. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee deeply regrets to note that, despite several requests and urgent appeals, the Government has failed to provide any information on the allegations.*
 - (b) *The Committee requests the Government to send its observations on the legislative and regulatory provisions mentioned in the complaint without delay.*

- (c) *Recalling that the Government is responsible for preventing all acts of anti-union discrimination and that it must ensure that complaints of anti-union discrimination are examined in the framework of a prompt and impartial procedure, the Committee urges the Government to conduct an independent inquiry into the dismissals mentioned in the complaint without delay and, should it be found that the dismissals were anti-union in nature, to reinstate the workers concerned to their posts or, should this prove impossible, to pay them adequate compensation so as to constitute a sufficiently dissuasive sanction.*

CASE NO. 2989

INTERIM REPORT

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

Allegations: The complainant organization alleges the unjustified refusal by the Ministry of Labour to register two trade unions within the tax administration, anti-union dismissals affecting the union founders and refusal by the tax administration to comply with reinstatement orders

308. The complaint is contained in a communication dated 27 September 2012 presented by the Trade Union, Indigenous and Campesino Movement of Guatemala (MSICG).
309. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case four times and made three urgent appeals to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in time [see 368th Report, para. 5; 370th Report, para. 6; and 371st Report, para. 6]. To date, the Government has not sent any information.
310. 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 complainant's allegations

311. By a communication dated 27 September 2012, the complainant organization alleges that in August and September 2012 two consecutive attempts were made to establish a new trade union organization at the Tax Supervisory Authority and that both initiatives were completely quashed by that institution with the acquiescence of the Ministry of Labour and Social Welfare, demonstrating the executive authority's wish to obstruct the establishment of trade unions within the national tax administration. In this regard the complainant organization states that: (i) the Labour Directorate-General at the Ministry of Labour and Social Welfare refused to register the trade unions (the Union of Workers with Principles

and Values at the Tax Supervisory Authority (SITRAPVSAT) and the “Pro Dignity” Union of Workers at the Tax Supervisory Authority (SIPROSAT)) for unjustified or non-existing reasons; (ii) most workers who took part in establishing the trade unions were immediately dismissed by the supervisory authority, supposedly for reasons of reorganization; (iii) the aforementioned workers were granted reinstatement orders by the labour tribunals with which the supervisory authority failed to comply, barring the dismissed workers and the minister responsible for implementing the reinstatement orders from its premises.

B. The Committee’s conclusions

- 312.** *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided its observations in relation to the complainant’s allegations, even though it has been requested several times, including through several urgent appeals, to present its comments and observations on this case.*
- 313.** *In these circumstances, and in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1971)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
- 314.** *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee remains convinced that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, para. 31]. The Committee asks the Government to be more cooperative in the future.*
- 315.** *The Committee observes that the present case deals with allegations concerning the unjustified refusal by the Ministry of Labour to register two trade unions within the tax administration, anti-union dismissals affecting the union founders and refusal by the tax administration to comply with reinstatement orders.*
- 316.** *Firstly, the Committee wishes to recall that the right to recognition through official registration is an essential facet of the right to organize. The right to official recognition through legal registration is an essential facet of the right to organize since that is the first step that workers’ or employers’ organizations must take in order to be able to function efficiently, and represent their members adequately [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 295]. Hence the Committee urges the Government to send as a matter of urgency its observations regarding the allegations of unjustified refusal to register the two trade unions. Also emphasizing 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) and recalling that, under the terms of the Memorandum of Understanding signed with the Workers’ group of the ILO Governing Body on 26 March 2013 further to the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made under article 26 of the ILO Constitution, the Government made a commitment to adopt “policies and practices to ensure the application of labour legislation, including ... effective and timely judicial procedures”, the Committee strongly hopes that, if the existence of the judicial decisions referred to by the complainant is verified, the Government will ensure that the administration concerned has complied with*

the orders to reinstate in their posts the workers who were dismissed further to the establishment of a trade union and will keep the Committee informed in this respect.

The Committee's recommendations

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

- (a) The Committee deeply regrets to note that, despite several requests and urgent appeals, the Government has failed to provide any information on the allegations.*
- (b) While recalling that the right to recognition through official registration is a key aspect of the right to organize, the Committee urges the Government to send as a matter of urgency its observations regarding the allegations of unjustified refusal to register the two trade unions.*
- (c) Recalling that no person should be dismissed or prejudiced on account of legitimate activities such as the establishment of a trade union, the Committee strongly hopes that, if the existence of the judicial decisions referred to by the complainant is verified, the Government will ensure that the administration concerned has complied with the orders to reinstate in their posts the workers who were dismissed further to the establishment of a trade union and will keep the Committee informed in this respect.*

CASE NO. 2990

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

Complaint against the Government of Honduras presented by

- **the Authentic Trade Union Federation of Honduras (FASH)**
- **the Workers' Union of the Casa Comercial Mathews Cemcol Comercial y Similares (SITRACCMACCOS) and**
- **the Workers' Union of the Honduras Institute of Children and the Family (SITRAIHNF)**

Allegations: Violations of the collective agreement, impediments to collective bargaining, dismissals and anti-union practices in a company and in the Honduras Institute of Children and the Family

318. The Committee last examined this case at its June 2013 meeting and submitted an interim report to the Governing Body [see 368th Report, paras 521–544, approved by the Governing Body at its 318th Session (June 2013)].

319. The Government sent new observations in a communication dated 28 May 2013.

320. Honduras 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

321. In its previous examination of the case in June 2013, the Committee made the following recommendation on the matter still pending [see 368th Report, para. 544]:

The Committee regrets to observe that the Government has not responded to the allegations concerning the company Casa Comercial Matthews Cemcol Comercial y Similares and requests it to send its observations without delay.

322. The Committee reproduces here the allegations of the complainant organization on the matter [see 368th Report, para. 524]:

In a communication dated 29 August 2012, FASH and SITRACCMACCOS allege that in 2012, the company Casa Comercial Matthews Cemcol Comercial y Similares, claiming a full restructuring of the company – but in reality seeking to dissolve the trade union – succeeded in getting many of the trade unionists to leave its employ and later dismissed the many other trade union members precisely when the trade union changed its statutes with a view to change from a company union to an industry-level union. The complainant organizations point out that at the date of the complaint the seven board members were the only ones that had not been dismissed; the employment relationship of all the remaining trade unionists had been terminated. The complainants have requested that the collective agreement be honoured, including the terms relating to the payment of wages and to the social benefits of those who were dismissed.

B. The Government's reply

323. In its communication dated 28 May 2013, the Government stated in relation to the allegations of a large number of dismissals and anti-union practices in the company Casa Comercial Mathews Cemcol Comercial y Similares, SA de CV, that, on 7 July 2012, a general inspection was conducted in the company. On that occasion, the inspectors concluded that there had been a violation of the right to freedom of association. The company was compelling workers to resign, in exchange for full payment of their benefits and the signing of an individual employment contract with another, non-unionized company belonging to the same group, with a view to dissolving the Workers' Union of the Casa Comercial Mathews Cemcol Comercial y Similares (SITRACCMACCOS). The labour inspectors noted that any workers who refused were threatened with dismissal. Over a period of 15 days, the company's workforce was reduced from 40 to ten workers. The Government adds that the company was notified on 18 July 2012 of the violations that had been observed, and that a further inspection was conducted on 5 November 2012, which concluded that the violations indicated in the notification document had not been remedied. On 30 April 2013, the General Labour Inspectorate issued the company with a fine of 10,000 Honduran Lempiras (HNL) and an official warning that the fine would be increased by 50 per cent in the event of a repeat offence.

C. The Committee's conclusions

324. *In relation to the allegations still pending concerning a large number of dismissals and anti-union practices in the company Casa Comercial Mathews Cemcol Comercial y Similares, SA de CV, the Committee takes note of the labour inspections to which the Government refers, which concluded that there had been a violation of the right to freedom of association, and of the General Labour Inspectorate's issuance of a fine. The labour*

inspectors concluded that there had been a violation of the right to freedom of association, in view of the fact that the company was compelling workers to resign in exchange for full payment of their benefits and the signing of an individual employment contract with another, non-unionized company belonging to the same group, with a view to dissolving the SITRACCMACCOS. The labour inspectors noted that any workers who refused were threatened with dismissal. Over a period of 15 days, the company's workforce was reduced from 40 to ten workers. The Committee observes that the fine of HNL10,000 (US\$520.29) which was imposed is the maximum amount provided for under the legislation of Honduras. In the Committee's view, this does not constitute, in the present case, a sufficient remedy against the violation of the right to freedom of association, which was established by the labour inspectors.

325. In this respect, the Committee recalls that, for a number of years, the Committee of Experts on the Application of Conventions and Recommendations has been requesting the Government to take the necessary measures to ensure that penalties for acts of anti-union discrimination and interference are sufficiently effective and serve as a deterrent. The Committee also notes the conclusions adopted in June 2013 by the Committee on the Application of Standards of the International Labour Conference on legal protection against acts of anti-union discrimination and interference, calling for an effective change to the law and practice with a view to ensuring the full application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and for the development of tripartite dialogue to resolve the matters concerned.
326. The Committee firmly expects that the Government will, in the near future, take all the necessary measures, in consultation with the social partners, to amend its legislation to ensure comprehensive protection against anti-union discrimination, in particular in case of anti-union dismissals by providing for reinstatement in the previous position or for penalties which serve as a sufficient deterrent against such acts. In the event that reinstatement is not possible for objective and compelling reasons, the union members concerned should receive adequate compensation which would represent a sufficiently dissuasive sanction. The Committee refers the legislative aspect of this case to the Committee of Experts on the Application of Conventions and Recommendations, which is already dealing with this matter. Furthermore, the Committee requests the Government to state whether the company has appealed against the fine imposed by the labour inspectorate and whether the union members who were dismissed or compelled to resign have lodged an appeal in this connection. The Committee requests the Government to keep it informed of the outcome of any appeals lodged.

The Committee's recommendations

327. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee expresses the firm hope that the Government will, in the near future, take all the necessary measures, in consultation with the social partners, to amend its legislation to ensure comprehensive protection against anti-union discrimination in the manner indicated in its conclusions.*
 - (b) *The Committee requests the Government to state whether the company has appealed against the fine imposed by the labour inspectorate for violating freedom of association and whether the union members who were dismissed or compelled to resign have lodged an appeal in this connection. The Committee requests the Government to keep it informed of the outcome of any appeals lodged.*

- (c) *The Committee refers the legislative aspect of this case to the Committee of Experts on the Application of Conventions and Recommendations, which is already dealing with the matter.*

CASES NOS 2177 AND 2183

INTERIM REPORT

**Complaints against the Government of Japan
presented by**

Case No. 2177

- **the Japanese Trade Union Confederation (JTUC–RENGO)**

Case No. 2183

- **the National Confederation of Trade Unions (ZENROREN)**

Allegations: At its origin, the complainants had alleged that the reform of the public service legislation was developed without proper consultation of workers' organizations, further aggravating the existing public service legislation and maintaining the restrictions on the basic trade union rights of public employees, without adequate compensation. Following extensive consultations, they now demand rapid guarantees for their basic labour rights

- 328.** The Committee has already examined the substance of this case on eight occasions, most recently at its March 2013 meeting, when it presented an interim report to the Governing Body [367th Report, paras 814–850, approved by the Governing Body at its 317th Session (March 2013)].
- 329.** The Japanese Trade Union Confederation (JTUC–RENGO) (Case No. 2177) submitted additional information in communications dated 29 August 2013 and 6 January 2014. The National Confederation of Trade Unions (ZENROREN) (Case No. 2183) submitted additional information in a communication dated 6 November 2013.
- 330.** The Government sent its observations in a communication dated 11 April 2014.
- 331.** Japan 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

- 332.** At its March 2013 meeting, the Committee made the following recommendations [see 367th Report, para. 850].
- (a) Noting the Government's indication that the new Administration which came into power on 26 December 2012 will review the past progress and examine the concrete content of

the national and local civil service reforms, the Committee urges the Government to pursue full, frank and meaningful consultations with all interested parties on these issues and to take the necessary measures so that the reform of the public service, along the lines of its recommendations, may be completed, without further delay, in order to ensure full respect for the freedom of association principles embodied in Conventions Nos 87 and 98, ratified by Japan, in particular as regards:

- (i) granting basic labour rights to public servants;
- (ii) fully granting the right to organize and to collective bargaining to firefighters and prison staff;
- (iii) ensuring that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements, and that those employees whose bargaining rights can be legitimately restricted enjoy adequate compensatory procedures;
- (iv) ensuring that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties; and
- (v) the scope of bargaining matters in the public service.

The Committee requests the Government to keep it informed of developments on all the above issues, and to indicate whether the bills on the public service reform at national and local levels that were submitted to the Parliament prior to its dissolution have been resubmitted for consideration.

- (b) The Committee requests the Government to keep it informed of the results of the lawsuit filed by KOKKOROREN against the Diet in the Tokyo District Court on 25 May 2012, as well as of the lawsuits filed by the employees' unions of a number of national university corporations against the university management for the payment of the wage loss as a result of the wage-cut measures.

B. Additional information from the complainants

333. In its communication dated 29 August 2013, JTUC-RENGO indicates that, while under the National Civil Service Reform Law, the time limit for the implementation of the reforms and the running of the Headquarters to Promote Civil Service Reform was set as July 2013, the bills related to the reform of the national public service, including restoring basic labour rights, have yet to be tabled in the Diet. On 12 February 2013, the Budget Committee, in response to the CFA recommendations, had stated that they have no intention of resubmitting bills which have already been rejected by the previous Diet session.

334. On 22 February 2013, the newly appointed Minister in charge of Civil Service Reforms, set up the Civil Service Reform of the Future discussion group, which had also discussed the setting up an autonomous industrial relations system. The Alliance of Public Service Workers Unions (APU) was called to the seventh meeting on 3 June 2013 as a concerned party.

335. On 28 June 2013, when the Headquarters to Promote Civil Service Reform was due to be disbanded, the government approved the policy document "Civil Service Reform of the Future", within the Headquarters. Specifically, the Government plans to construct a legal framework based on the Amendment Bill for the National Public Service Act, which was approved by Cabinet in 2009 then submit related bills to the extraordinary Diet session in autumn and set up a Cabinet National Personnel Bureau in spring 2014. However, problematically, there has been no mention whatsoever of establishing an autonomous industrial relations system which restores basic labour rights.

- 336.** The JTUC–RENGO urges the Committee to assure that the Government makes every effort, in designing future institutions, to conduct adequate and careful deliberations with labour and management and to build consensus. The new Government has not only disclaimed the previous Government’s measures to reform legal systems so that Conventions Nos 87 and 98, which embody the principle of freedom of association, are at least respected, but has also not made clear that it will take measures to find solutions to the issues in ILO recommendations that have been communicated eight times.
- 337.** The JTUC–RENGO further asserts that, on 24 January 2013, regarding local public service wages, which are determined by each local government, based on the main objective of local autonomy, the Cabinet decided “to request all local public bodies to reduce the wages of local public servants in line with wage reductions for national public servants”. Also, in the 2013 Budget, the national Government unilaterally decided to reduce some parts used as payroll financial resources for local public servants in the local tax grants. Tax grants are financial resources specific to local governments, to be used by them as they see fit. As a result of this decision, not only trade unions, but also the National Governors’ Association, which is made up of the heads of local governments, and other local groups have protested strongly. However, the pressure on what is, in effect, payroll financial resources is functioning as an actual forced cutback for workers and management and many local governments are in the situation where they have no choice but to reduce the workers’ wages.
- 338.** As of 1 July 2013, 826 local government bodies (46.2 per cent) had already cut wages and 133 (7.4 per cent) were planning to or deliberating on wage cuts. Some 368 bodies (20.6 per cent) said wage cuts were under consideration or planning to be considered. Compared to this, 230 bodies (12.9 per cent) were planning not to cut wages.
- 339.** The national Government’s requesting a wage cut for local public servants is an unjust intervention in terms of the local autonomy of the Government as well as independent industrial relations. JTUC–RENGO deeply regrets that the Government which has executive responsibility grounded in laws and the right to submit bills to the Diet, has made such a request. While the Government continues to repress the basic labour rights of local public servants, which has been a legislative policy issue for over 60 years, wage settlement through the National Personnel Authority (NPA) recommendation has been in part a compensation measure for this repression. It is an extremely serious issue that the Government has unilaterally forced the abandonment of the NPA recommendation system.
- 340.** In its communication dated 6 January 2014, the JTUC–RENGO further informs that on 5 November 2013, the Government approved the Bill for Partial Amendment of the National Public Service Act (hereafter “government Bill”) by cabinet decision, and submitted the Bill to the 185th extraordinary Diet session, convened on 15 October 2013. The JTUC–RENGO expresses its regret that the government Bill has totally failed to include measures regarding autonomous industrial relations and runs contrary to the recommendations of the Committee and of Conventions Nos 87 and 98.
- 341.** On 20 November 2013, the Democratic Party of Japan (DPJ) submitted to the Diet a “Bill for an Act on the Labour Relationships of National Public Servants” (hereafter “counterproposal”) which embodied the same content as the four bills related to the reform of the national public service and the two bills for the reform of the local public service that the DPJ had submitted to the Diet when it was the ruling party.
- 342.** In the Lower House plenary session dedicated to deliberation of the government Bill on 22 November 2013, the JTUC–RENGO indicates that the Minister in charge of Civil Service Reform, announced the view that “The ILO has issued recommendations concerning restrictions on the basic labour rights of the public servants in our country, but

it is my perception that they basically request that the Government hold sufficient talks with related parties on the civil service reform and continue to provide information to the ILO regarding developments in the reform.” JTUC–RENGO is concerned about a re-enactment of the situation pointed out in paragraph 651 of the Committee’s 329th Report (November 2002) that states, “the Committee is bound to conclude that whilst a number of meetings were held, the views of representative organizations of public employees, at national and local levels, might have been listened to but were not acted upon”. The JTUC–RENGO therefore requests the Committee to make clear its definitive view on “consultation and dialogue with the related parties” in order to prevent this happening again.

343. Additionally, on 3 December 2013, the governing LDP/New Komeito and the opposition DPJ made an agreement on attaching an additional resolution at the time of the vote in the Cabinet Committee in the 2014 ordinary Diet session. The resolution reads as follows: “Regarding an autonomous industrial relations system, the Government will carry out the necessary exchange of views with the employees’ organization(s) in efforts to form an agreement.”
344. In the 185th extraordinary Diet session, the government Bill and the counterproposal were carried over to the next session of the Diet, but the above events are an indication that, despite the receipt of eight ILO recommendations, the Government still has not taken measures regarding the legal amendments for minimum compliance with the principles of freedom of association embodied in Conventions Nos 87 and 98, nor has it made its position clear on the resolution of this issue.
345. Regarding the “national Government’s appeal to reduce wages for local public servants”, the latest information shows that as of October 2013, 1,069 (59.8 per cent) local government bodies had “completed the wage reduction implementation”, 31 (1.7 per cent) bodies were “scheduled to implement or in consultation on wage reductions” and 203 (11.3 per cent) bodies were “considering or will in the future consider wage reductions”. In contrast, 255 (14.3 per cent) bodies, had “no plan to implement wage reductions”. The JTUC–RENGO considers this evidence that the unilateral decision by the Government to constrict the real wage financial resources is in fact functioning as a compulsory wage reduction for labour and management, and that the circumstances under which many local governments have had little option but to defer to the national Government’s appeal and reduce wages for local public servants has led to an even more serious situation.
346. The JTUC–RENGO reiterates that as well as being an unjustified intervention into local government and labour–management autonomy by the national Government, the Government’s appeal for the wage reduction is tantamount to maintaining the restrictions on local public servants’ basic labour rights while unilaterally and coercively obstructing the wage decisions made by the NPA recommendations which were a compensation measure for accepting the restrictions. Since there has been no deliberation toward a resolution of the problem of the basic labour rights of local public servants, including the granting of the firefighters’ right to organize, the JTUC–RENGO reports this to the Committee as a case involving renewed infringements of the principle of the freedom of association embodied in Conventions Nos 87 and 98.
347. In its communication dated 8 January 2013, ZENROREN indicates that the Headquarters for the Promotion of National Public Service Personnel Reform (hereafter referred to as “the Headquarters”) led by the Prime Minister Abe on 28 June 2013 decided a document entitled “On the Coming Public Service Personnel Reform” that set out the guidelines for the “Reform” under the new Government. The document in question can be situated in the extension of the National Public Service Personnel Reform under the first Cabinet of Abe

(from September 2007 to August 2008). It says that “the new national public service personnel system should be designed in such a way that it will be managed with mobility in accordance with the Basic Law on National Public Service Personnel Reform (hereafter referred to as the Basic Law)”, but does not mention anything about restoring the basic labour rights guarantee to the public servants. This not only holds back the progress towards the restoration of the right to conclude labour agreements of public servants made by the previous Government by introducing to the Diet four bills related to the public personnel reform (these bills were later scrapped), but it also ignores article 12 of the Basic Law that says that “the Government shall present to the nation the entire picture of the benefits and the costs of expanding the scope of employees to whom the right to conclude labour agreements shall be accorded and with the understanding of the population, it shall establish a system of autonomous labour–management relations which will be open to the people.” If the Government really intended to implement a reform in accordance with the Basic Law, it should necessarily have taken up the question of restoring basic labour rights of the public personnel.

- 348.** ZENROREN indicates that the Government has announced that it would prepare a set of new reform bills following the Headquarters’ new guidelines. However, these new reform bills are likely to be the remake of the National Public Personnel Reform-related bills that were introduced to the Diet in March 2009 under the LDP-Komei Coalition Government but abandoned afterwards due to the dissolution of the House of Representatives in July of the same year. ZENROREN in its communication to the ILO dated March 2009 had pointed out the problems with these bills. What is most serious about these bills is that they would reduce the competences of the NPA, in particular through the transfer of the administration of salary scales that concern working conditions of the public personnel from the NPA to the Cabinet Personnel Bureau which fact may have negative impact on the basic labour rights of public servants.
- 349.** The NPA on 8 August this year made recommendations regarding working conditions of public personnel but failed to recommend a review of salaries although its own study on wages had revealed that national public servants salaries were 7.78 per cent (¥29,282) inferior to those in the private sector. It was the second time in a row since last year that the NPA refrained from making any recommendation regarding salaries. This testifies to the fact that the NPA is less and less functioning as a compensatory mechanism for the restriction placed on the fundamental labour rights of public servants.
- 350.** ZENROREN provides further information concerning the salary cut adopted by the Diet on 25 May 2012 and the lawsuit filed by Japan Federation of National Service Employees (KOKKOROREN) claiming that: (1) under the restriction of the basic labour rights, the law on salary cuts ignoring the NPA recommendation that is to compensate that restriction constitutes a violation of the Constitution and the relevant ILO Convention and is therefore invalid; (2) the fact that no collective bargaining was held with KOKKOROREN about the salary cut bill is tantamount to the violation of the right to collective bargaining, runs counter to the Constitution and the relevant ILO Convention and therefore the law is invalid.
- 351.** ZENROREN indicates that the position of the State of Japan asserts: (1) there is no violation of the Constitution, because the NPA recommendation which is a compensatory mechanism for the restriction of the basic labour rights does not bind legally either the Diet nor the Cabinet; and (2) that the national public employees do not have the right to conclude labour agreements and therefore they do not have the right to any collective bargaining that involves labour–management joint determination of working conditions. According to ZENROREN these claims of the State ignore the compensatory mechanism of the NPA recommendation for the restriction of the basic labour rights of the public employees and deny their right to collective bargaining. Based on these claims, and despite

the fact that the Government repeatedly explained that the salary cut law is an extraordinary measure limited to two years, the Government now suggests the possibility of taking a new salary lowering measure after the expiration of the salary cut law. Moreover, on 24 January 2013 the Government decided that it would request all the local governments in the country to implement by July 2013 an average salary reduction of 7.8 per cent of their employees, a reduction comparable to that applied to the national public employees. In addition, the Government unilaterally reduced, in the 2013 state budget the tax allocated to local governments for the personnel costs of their employees including school teachers as well as the share of state funding in compulsory education costs.

352. According to ZENROREN, these measures constitute an interference with the salary determination of local public personnel which in the first place should be made autonomously under each local government according to the recommendations issued by the local personnel authority and through employee–employer negotiations. It is virtually an imposition of salary cut on the local governments by the central Government. Concerned about this situation, the National Association of Prefectural Governors has expressed its protest by issuing statements on several occasions. Similar statements have been issued by the National Association of City Mayors and the National Association of Towns and villages.
353. Due to the reduction of tax allocation to local governments and the continuous interference of the Ministry of General Affairs, the local governments were forced to proceed with a salary cut comparable to that of state employees. Since July 2013, a total of 826 local governments (46.2 per cent of the total) have implemented a salary cut for their employees upon the “request” of the central Government. In many of the municipalities, employee–management negotiations have been neglected in the process and a salary cut was imposed unilaterally by the management.
354. The Government has also urged the independent administrative institutions (IAIs) under its control as well as state-run universities to implement a salary cut comparable to that of state employees. As these public entities are evaluated by the Government or ministries for their performance, they fear to be evaluated negatively if they refuse to bend to the demand of the Government. As a result, in the hospitals for occupational diseases and accidents operated by an IAI “Workmen’s Health and Welfare Organization” in different regions of the country, the management has unilaterally cut the bonus disregarding the work rules agreed with the union. The union concerned has filed a complaint of unfair labour practice in the labour relations commission for relief order. In the case of state-run universities, since November 2012, the unions in eight universities across the country have lodged lawsuits in district tribunals for unilaterally decided salary reduction.
355. In conclusion, while the Government of Japan continues to give priority to the reform of public personnel in its political agenda, it still disregards the Committee’s recommendation since it has not taken up the recovery of basic labour rights of public servants as an item to be considered with the reform. Ten years have passed since this case was filed in 2002. During all these years the Government has continued to ignore the recommendations made on eight occasions. ZENROREN strongly requests the Committee to press the Government of Japan to achieve a public personnel reform aimed at re-establishing the basic labour rights of public employees and to this end, to multiply consultations and negotiations with all the unions concerned.

C. The Government’s reply

356. In its communication dated 11 April 2014, the Government indicates that the new Government which came into power on 26 December 2012 has held meetings of the

Advisory and Discussion Group for Civil Service Reform for the Future in order to make a comprehensive review and examination of a wide variety of reforms. Measures for the autonomous labour–employer relations system (Article 12 of the Reform Law) were discussed at the fourth meeting on 25 April 2013 where various opinions were heard including as regards the problems of the system that had been incorporated into the previous four civil reform related bills. At another meeting in June 2013, various views from personnel managers of some government ministries, mayors and the Alliance of Public Service Workers Unions were heard.

- 357.** On 5 November 2013, the Government submitted to the Diet the Amendment Bill of the National Public Service Employee Law. Carried over to the next session, the new bill was approved in the House of Representatives on 14 March 2014. The new bill does not include measures for the autonomous labour–employer relations system given that there were various issues with the system that had been incorporated in the previous bills. The Government has therefore had to continue to examine measures for the autonomous labour–employer relations system carefully. The Government however does not agree with the concerns raised by the ZENROREN that the competencies of the NPA would be reduced.
- 358.** The Government states that it has held regular discussions with the relevant trade unions on this matter up to the submission of the bill to the Diet. The new bill includes elements that approach some of the ideas of the relevant trade unions such as the fact that the NPA continues to have authority over affairs ensuring fairness in appointment of national public service employees and the provision that the Prime Minister sufficiently respect opinions of the NPA in case of deciding or revising the fixed number of posts in each job grade is established.
- 359.** In reply to the complainants' additional information, the Government emphasizes that it held discussions with the relevant trade unions taking requests from the Committee into consideration. In addition, the new bill set measures that the Cabinet Bureau of Personnel Affairs is going to take charge of examining measures for the autonomous labour–employer relations system in article 12 of the Reform Law with continuous hearing from those concerned.
- 360.** In terms of the local public service reform, meetings heard the views of a mayor of local government and the APU. In accordance with the supplementary provision of the reform law which provides that the Government should examine what the labour rights of local public service employees should be in a manner consistent with the measures for the labour–employer relations system of national public employees in article 12, the Government will examine the handling of measures for local public service reform, including the above, by hearing from those concerned.
- 361.** In March 2014, the Government submitted an amendment Bill of the Local Public Service Law and the Local Incorporated Administrative Agency Law to the Diet, which is aimed at building ability and performance–based personnel treatment system by introducing personnel evaluation and proper local public employees' business appointment. In planning this law, the Government had various meetings with the APU.
- 362.** As regards the reduction in remuneration of national public service employees, the Government reiterates that this special measure was taken on a temporary basis since additional cuts in the annual expenditure were indispensable, taking into consideration the severe national fiscal situation and the necessity to respond to the great east Japan earthquake. This special measure was implemented for two years and ended on 31 March 2014.

363. As regards the remuneration of local public service employees, the Minister for Internal Affairs and Communication had requested each local government to devise some method of revision in accordance with the Revision and Special Temporary Measures on Remuneration Law and following the measure to cope with pressing issues, quickly and appropriately, based on the necessity of projects of disaster prevention and disaster reduction and revitalizing the regional economies. The Minister held several conferences made up of six national associations of chief executives or chairs of local government assemblies to discuss. The Minister wrote to the chief executives of local government emphasizing that this was a temporary measure as an urgent solution to concentrate the entire capacity of the national and local governments on the current largest mission of Japan's revitalization. As remuneration in this case is a local government matter, the request could not force the reduction in remuneration. The final decisions were taken through discussion in assemblies and the request never altered the independent process of local government. This is demonstrated by the fact that a certain number of local governments did not reduce the remuneration.
364. The Government indicates that it will provide the Committee with information of the results of the lawsuits brought by KOKKOROREN and by a number of unions of national university corporations. As regards the latter, the Government qualifies that employees of national university corporations are not classified as civil servants and have the right to organize and engage in collective bargaining. The Government had requested national university corporations to take necessary measures to consider the salary review for national civil servants while being cognizant of the autonomous and independent nature of management-labour relations.
365. In conclusion, the Government states that it has done its utmost to have meaningful discussions and achieve fruitful civil service reform, bearing in mind the basic idea that frank exchanges of view and coordination with relevant organizations are necessary. The Government will continue to take such an approach and to refer to the Committee's recommendations. It will continue to provide the Committee with timely and relevant information and requests the Committee to recognize the current situation as well as the sincerity of its efforts on this matter.

D. The Committee's conclusions

366. *The Committee recalls that these cases, initially filed in 2002, concern the reform of the public service in Japan. The Committee notes that both the Government and the complainant organizations provide detailed information on the most recent steps taken in this reform process, as well as in the process of revising the remuneration of public employees.*
367. *With regard to the national public service reform, in its previous examination of this case, the Committee had expressed its regret that, despite the progress which had been achieved towards the elaboration of a reform of the public service in Japan which would have included a number of basic labour rights for national public service employees, in the end none of these measures were adopted.*
368. *With regard to the local public service reform, the Committee recalls that the amendment bills that had been submitted to the Diet in November 2012, but dropped from the agenda pursuant to its dissolution due to the elections, had included the following important steps toward the development of a framework for autonomous labour relations: (1) granting the right to conclude collective agreements to local public service employees in the non-operational sector, with the exclusion of the personnel making important administrative decisions and the personnel whose right to organize would continue to be restricted and who would benefit from appropriate compensatory measures; (2) establishing the matters*

to be handled by collective bargaining, as well as the procedures thereof and the parties thereto; (3) prohibition and examination of unfair labour practices; (4) procedures for conciliation, mediation and arbitration by the Central Labour Relations Commission and the Prefectural Labour Relations Commission; and (5) granting the right to organize and collective bargaining to fire defence personnel (not including the right to conclude collective agreements). The Committee urged the Government to pursue full, frank and meaningful consultations with all interested parties on these issues and expected that the Government would make every effort to complete the civil service reform without any further delay given the time that had elapsed since the complaint was filed and the long and intensive dialogue in which the Government and the social partners had been engaged in order to ensure full respect for the freedom of association principles embodied in Conventions Nos 87 and 98, ratified by Japan.

- 369.** *The Committee notes the Government's statement that the Amendment Bill of the National Public Service Employee Law, which has now been approved by the Diet, does not include measures for the autonomous labour-employer relations system given that there were various issues with the system that had been incorporated in the previous bills. The Committee further notes the Government's statement that under the new bill the Cabinet Bureau of Personnel Affairs is going to take charge of examining measures for the autonomous labour-employer relations system in article 12 of the Reform Law with continuous hearing of those concerned. In terms of the local public service, the Government has indicated that it will examine the handling of measures for local public service reform by hearing from those concerned.*
- 370.** *The Committee regrets that, over ten years since the filing of this complaint, no concrete measures have yet been taken to provide basic labour rights to the public service and urges the Government to take the necessary measures in consultation with the social partners concerned, without further delay, to ensure basic labour rights for public service employees in line with its previous recommendations. The Committee expects that the necessary legislative amendments will be submitted to the Diet without delay and requests the Government to keep it informed of developments in this regard.*
- 371.** *As regards the allegations concerning the unilateral reduction of the national public service employees' wage, the pressure for reduction of local public employee wages, the degradation of the NPA recommendation system, and the urgent need to restore basic labour rights for public sector employees to avoid such situations in the future, the Committee notes the Government's reiteration that the reduction in wages of national public service employees was indispensable taking into consideration the severe national fiscal situation and the necessity to respond to the great east Japan earthquake. The Government confirms that this special measure was implemented for two years and ended on 31 March 2014. As regards local employees, the Committee notes the Government's statement that it cannot impose such a reduction but did need to draw local governments' attention to the serious need to respond to this situation. As regards employees of national university corporations, they are not classified as civil servants and thus have the right to organize and engage in collective bargaining, therefore the Government was cognizant of the autonomous and independent nature of management-labour relations when requesting that measures be taken to consider the salary review.*
- 372.** *The Committee takes note of the information provided by ZENROREN that the Japan Federation of National Service Employees (KOKKOROREN) filed a lawsuit against the salary cut adopted by the Diet on 25 May 2012 claiming that: (1) under the restriction of the basic labour rights, the law on salary cuts ignoring the NPA recommendation that is to compensate that restriction constitutes a violation of the Constitution and the relevant ILO Convention and is therefore invalid; and that (2) the fact that no collective bargaining was held with KOKKOROREN about the salary cut bill is tantamount to the violation of the*

right to collective bargaining, which runs counter to the Constitution and the relevant ILO Convention and is therefore invalid. The Committee requests the Government and the complainant to provide information on the results of this lawsuit, as well as those that were brought concerning the unilateral cut at the “Workmen’s Health and Welfare Organization” and those concerning the wage cut measures at eight state-run universities.

373. As a general matter, in cases where the Government has resorted to statutory limitations on collective bargaining, the Committee stresses that repeated recourse could, in the long term, only prove harmful and destabilize labour relations, as it deprives workers of a fundamental right and means of furthering and defending their economic and social interests. Where the budgetary powers lay with the legislative authority, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the bargaining parties, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 1000 and 1035].
374. The Committee further notes the concerns raised in the complaints that the authority of the NPA recommendations on wage settlement, which acts as a compensatory measure until the basic labour rights are granted to public servants, has been undermined. It further notes the concerns raised with respect to possible transfer of authority relating to the administration of salary scales to the cabinet personnel bureau. The Committee requests the Government to provide detailed information on the NPA’s functioning in the current context and any proposals for its revision.

The Committee’s recommendations

375. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee urges the Government to take the necessary measures, without further delay, in consultation with the social partners concerned to ensure basic labour rights for public service employees in full respect for the freedom of association principles embodied in Conventions Nos 87 and 98, ratified by Japan, in particular as regards:*
 - (i) *granting basic labour rights to public servants;*
 - (ii) *fully granting the right to organize and to collective bargaining to firefighters and prison staff;*
 - (iii) *ensuring that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements, and that those employees whose bargaining rights can be legitimately restricted enjoy adequate compensatory procedures;*
 - (iv) *ensuring that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties; and*
 - (v) *the scope of bargaining matters in the public service.*

The Committee expects that the necessary legislative amendments will be submitted to the Diet without delay and requests the Government to keep it informed of developments in this regard.

- (b) The Committee requests the Government and the complainant organizations to keep it informed of the results of the lawsuit filed by KOKKOROREN, as well as of the lawsuits concerning the unilateral cut at the “Workmen’s” Health and Welfare Organizations and those filed by the employees’ unions of a number of national university corporations against the university management for the wage-cut measures.*
- (c) The Committee requests the Government to provide detailed information on the functioning of the National Personnel Authority in the current context and any proposals for its revision.*

CASE NO. 3024

INTERIM REPORT

**Complaint against the Government of Morocco
presented by
the Democratic Federation of Labour (FDT)**

Allegations: The complainant organization reports the authorities’ exclusion of the Democratic Union of the Judiciary (SDJ) from all collective bargaining despite it being the most representative organization in the sector, harassment of the organization’s members and the violent dispersal of peaceful demonstrations by the security forces

376. The complaint is contained in a communication from the Democratic Federation of Labour (FDT) dated 24 March 2013.

377. The Government sent its reply in a communication dated 4 July 2013.

378. Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as the Workers’ Representatives Convention, 1971 (No. 135), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant’s allegations

379. In a communication dated 24 March 2013, the FDT states that in 2011 Morocco drafted and approved a new Constitution enshrining freedoms and human rights. Of particular note are article 8, which emphasizes the role of trade union organizations in the protection of members’ social and economic interests and rights and encourages the public authorities to engage in collective bargaining, and article 29, which guarantees the freedom to join a

trade union and the right to strike, and states that the conditions under which the right to strike may be exercised shall be determined by an organic law. According to the FDT, the new constitutional framework provides an opportunity for the Government to increase its engagement in protecting freedom of association and to give fresh impetus to collective bargaining, thereby complying with international labour standards. The FDT considers that there is no longer any basis for reservations and reticence towards ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

- 380.** The FDT recalls the complaints presented over the years by trade union organizations in relation to freedom of association and collective bargaining, and the conclusions and recommendations of the International Labour Organization's supervisory bodies on the matter, in particular the Committee on Freedom of Association, the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Standards of the International Labour Conference, and notes that the Government has not adopted the necessary legislative reforms.
- 381.** The FDT reports many violations of freedom of association and collective bargaining by the authorities in relation to one of the federation's affiliates, the Democratic Union of the Judiciary (SDJ). The FDT states that the SDJ is the most representative trade union in the justice sector, in terms of both the number of members and the number of representatives elected to joint committees (65 per cent of representatives at the regional level and 99 per cent at the central and national levels). According to the complainant organization, the SDJ's status as the most representative union and the absence of any legislation concerning collective bargaining in the public service make it the logical choice of organization to represent the judiciary in labour relations and any collective bargaining in the sector.
- 382.** The complainant organization reports that, since the Government came into office, the Ministry of Justice has declined to have any dealings with the SDJ, thereby contravening the national practice in collective bargaining. The complainant organization also reports acts of harassment and discrimination towards SDJ leaders and members, and accuses the Government of the actions set out below.
- 383.** In 2011, the Government purposely excluded the SDJ from the work of the High Authority for the Reform of the Judicial System, despite the fact that the reform concerned the working conditions of court clerks and judiciary officials in general. The union's various protest actions failed to change the situation.
- 384.** The Ministry of Justice refuses to apply an agreement signed in June 2006 which constitutes a framework agreement for the organization of labour relations in the sector (a copy of the agreement is enclosed with the complaint). The complainant organization reports that the Ministry of Justice refuses in particular to organize the monthly negotiation meetings provided for in the agreement. According to the complainant, a new agreement was signed with the current Minister of Justice following mediation from human rights associations. The new agreement provides for dialogue and negotiation sessions to be held at the union's request. However, besides the fact that the Ministry of Justice has never followed up on the SDJ's many written requests for such sessions, the complainant reports that the agreement was signed by another union in the judiciary which it considers to be closely allied to the Government.
- 385.** The Ministry of Justice published a statement on 27 December 2012 officially announcing a boycott of the SDJ's activities and refusing any dialogue (a copy is provided by the complainant). The announcement effectively prevents the union from developing its activities, in violation of the Constitution of Morocco and universal principles of freedom of association. Such arbitrary and unilateral action by the Ministry of Justice leads the

complainant to question the purpose of adopting rules and laws or of organizing elections to associations to measure representativeness.

- 386.** The Ministry of Justice harassed the SDJ's leaders by demanding explanations and making other inquiries on the grounds of incitement to strike (the complainant appended a communication to the complaint). By way of example, the complainant reports that the Ministry asked union leaders for explanations about absences after a strike of which it had in fact been informed. The complainant also reports internal circulars calling for an end to union members' rights to be absent to attend union training and participate in union meetings.
- 387.** The SDJ deputy general secretary was suspended without cause from his position as head of the registry at the court of first instance of Ksar el-Kebir (a city in northern Morocco), barely a week after a demonstration was organized during a visit from the Minister of Justice (document appended to the complaint).
- 388.** The Government violently suppressed peaceful demonstrations organized by the SDJ to protest against the total lack of negotiation and its exclusion from the work of the High Authority for the Reform of the Judicial System. For example, the security forces violently dispersed a peaceful sit-in in front of Al Akhaoayne school in Ifrane on 19 October 2012, injuring the SDJ general secretary, Mr Abdessadek Saidi, who had to be admitted to the clinic in Fes for a week (the complainant appended a medical certificate). The security forces were also extremely violent in dispersing a group of trade union activists during a peaceful demonstration in front of the Tangier court of first instance on 1 February 2013. The victims, who are named by the complainant, had to be taken to hospital by ambulance. On 9 February 2013, a group of trade union leaders were forcibly detained by the management and security staff of the Mohammedia social welfare association's summer resort. The public prosecutor's office refuses to register any complaint in relation to the matter.
- 389.** The Government is withholding pay from striking SDJ activists. The complainant notes in this connection that the withholding of pay is without any legal basis since, although the Labour Code provides for the suspension of an employment contract during a strike, there is no similar instrument for the public service. Furthermore, the FDT observes that the Government is taking advantage of the legal lacuna to impede the exercise of the right to strike by withholding pay only from the members of certain unions.
- 390.** The Minister of Justice refused to debate with the SDJ general secretary in a television broadcast in January 2013. At the last minute, the television channel's management told the union leader that the Minister of Justice had refused to meet with him in the same TV studio. The complainant states that this was a denial of a trade union leader's right of expression and his right to use the public media.
- 391.** The complainant reports the Minister of Justice's hostility towards the SDJ in repeated aggressive statements, despite the FDT having corresponded with the Head of Government to request his intervention to put an end to the excesses of the Minister of Justice (copies are appended by the complainant).
- 392.** The complainant states that, as a result of all these attacks on the SDJ by the authorities, a judicial coalition consisting of 18 independent civic associations which monitor and advocate for human rights announced its solidarity with the SDJ.

B. The Government's reply

393. In a communication dated 4 July 2013, the Government recalls that Morocco ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on 20 May 1957 and adopted the *Dahir* (Royal Decree) of 16 July 1957 governing trade unions, which grants freedom of association to workers, including public servants. The recognition of freedom of association led to the establishment of a pluralist trade union movement comprising more than 25 trade union associations, four of which are considered to be the most representative. The adoption of the new Labour Code in 2003 provided an opportunity to develop the right to organize, by granting increased protection to workers' representatives and providing them with the necessary facilities, in the light of the Workers' Representatives Convention, 1971 (No. 135), which was ratified in 2002.
394. The Government also states that section 14 of the General Public Service Regulations (*Dahir* of 24 February 1958) provides that the right to organize shall be exercised by public servants under the conditions set out in the legislation in force. The same section provides that "membership or non-membership of a trade union shall have no bearing on matters concerning recruitment, promotion, assignment or the overall circumstances of the officials to whom these Regulations apply". With a view to enabling officials with trade union responsibilities to carry out their union and representative duties, section 41 of the Regulations provides for the granting of special leave or absences on full pay which are not counted as part of the regular leave for duly mandated representatives of public servants' unions or elected members of governing bodies to attend union, federation, confederation and international congresses.
395. Public servants exercise the right to organize in full freedom, as do workers in the private sector. There is significant trade union activity in many areas of the public service, such as the education, healthcare, justice and financial sectors and local government. The right to strike is also exercised in full freedom in the public sector, including in the justice sector. The Government states that the justice sector, in which several trade unions are active, has had several general strikes which have negatively impacted on the interests of users and litigants, but the Government took no action against the strikers even though no provision had been made to ensure a minimum service.
396. As regards collective bargaining in the public service, legislation was introduced to establish a Higher Council of the Public Service, which has a consultative role with regard to bills and regulations affecting officials covered by the General Public Service Regulations and in-service training for officials and employees of the State and local governments.
397. Furthermore, public servants' unions present their candidates for election in the framework of joint committees, in order to represent the professional interests of public servants. Negotiation of the various subjects which affect the public service takes place in the framework of national social dialogue within the Public Sector Committee. Areas of collective bargaining in the public sector have included promotion of public servants, revision of the regulations pertaining to certain categories of public servants, in-service training, acquisition of permanent contracts for temporary workers, social activities, retirement, family allowances, the performance appraisal system for public servants, and union offices. Since 1996, the aforementioned areas have been the subject of four collective agreements between the Government and employers' and workers' organizations (dated 1 August 1996, 23 April 2000, 30 April 2003 and 26 April 2011). Furthermore, with a view to promoting collective bargaining in the public service, the Government ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), on 4 June 2013. It had previously ratified the Collective Bargaining Convention, 1981 (No. 154).

- 398.** Concerning the allegations that the Ministry of Justice and Freedoms violated the right to collective bargaining, the Government states, firstly, that the concept of the most representative trade union is set out in Title V of the Labour Code, section 425 of which provides: “In the determination of the most representative trade union at the national level, account must be taken of the following: the union must have polled at least 6 per cent of the total number of staff delegates elected in the public and private sectors, it must enjoy effective independence and it must have contractual capacity. In the determination of the most representative trade union at the enterprise or organization level, account must be taken of the following: the union must have polled at least 35 per cent of the total number of staff delegates elected at the enterprise or organization level and it must have contractual capacity.”
- 399.** The Government acknowledges that there are no criteria in the legislation for the determination of the most representative union in the public sector. This is remedied in the Trade Unions Bill, section 37 of which provides that, in order to enjoy the status of the most representative trade union, the union must poll at the national level in the public sector at least 6 per cent of the total number of staff representatives within the joint administrative committees.
- 400.** The Government states that, despite the legal lacuna, the Ministry of Justice and Freedoms granted the SDJ a privileged position in the framework of the agreements concluded. However, the Government recalls that the Committee on Freedom of Association has stated that the concept of the most representative union must not be used to exclude other trade union organizations which do not satisfy the conditions of representativeness but which nevertheless retain the right to represent their members, such that public servants are not encouraged to join only the most representative union.
- 401.** As regards non-representation of the SDJ in the High Authority for the Reform of the Judicial System, the Government explains that the authority comprises 40 individuals from various sectors whose appointment is unrelated to the category, profession or union to which they belong. The High Authority’s mandate is to prepare a draft agreement for an extensive, comprehensive reform of the judicial system. It has no decision-making power or oversight over negotiations with any party. Its role is restricted to setting the main lines of the reform and the dialogue methodology, and collecting opinions and proposals for submission to regional debates. The Government adds that a link has been added to the Ministry of Justice website (www.justice.gov.ma) to receive citizens’ comments and proposals concerning the reform of the judicial system.
- 402.** According to the Government, the real discussion on the main lines of the reform took place in 11 national debates held in the various regions of Morocco. The Office for the Administration of National Dialogue – an umbrella organization comprising more than 180 public and political establishments and those linked to political parties, as well as representatives of unions and associations – officially invited the SDJ to join. However, the union flatly rejected the offer in several communications, on the pretext that it was not represented in the High Authority (document appended by the Government). The Government emphasizes that the union attempted to disturb meetings of every regional debate and to rally its members to occupy the premises in which the debates were held.
- 403.** Regarding the allegations of non-compliance with the agreements concluded with the Ministry of Justice and Freedoms, the Government states that the Ministry in question attempted to institutionalize sectoral dialogue, either centrally or regionally, with all trade unions in the sector, with a view to seeking solutions to the public servants’ demands through two mechanisms: (a) central dialogue organized within the Central Committee comprising representatives of the Ministry and the national offices of the trade unions; and (b) regional dialogue organized regularly in the regional dialogue committees between the

regional directors in the appeal courts of the Kingdom and the regional or local offices of the trade unions.

404. In this context, the Minister of Justice and Freedoms met with the national executive committees of the trade unions on 1 February 2012 after the new Government had been formed. A series of meetings on sectoral dialogue was initiated, including three with the SDJ. However, according to the Government, despite the regular dialogue and positive outcomes, the SDJ adopted a negative position and chose to boycott the meetings in response to the Ministry's conclusion of an agreement with the National Association of the Justice Sector, which is the second largest union in the sector, and the National Trade Union of the Judiciary. The Government points out that the Ministry has always wanted to have constant dialogue with all trade unions, some of whose demands are identical while others are different. The Government states that the Ministry's conclusion of an agreement not only with the SDJ but also with the National Association of the Justice Sector and the National Trade Union of the Judiciary enables all public servants in the Ministry of Justice, even those who are not members of the SDJ, to exercise their right to organize.
405. Regarding the allegations of violations of freedom of association during peaceful protests, the Government states, firstly, that the Ministry of Justice and Freedoms had decided to give the SDJ priority in the sectoral dialogue. However, the union chose to publish statements insulting, defaming and denigrating the head of the judiciary (document provided by the Government). The Government states that the SDJ deliberately chose to be confrontational by urging its members to obstruct the movements of the Minister of Justice and transporting hundreds of members in order to prevent the Minister from reaching the court of first instance in Ouyoune (southern Morocco), which was hosting a meeting of the High Authority for the Reform of the Judicial System. The union also disrupted the normal activities of the court, thereby infringing the rights of citizens, litigants and court clerks.
406. Despite the SDJ's practices which, in the Government's view, bear no relation to legitimate trade union action, the Ministry of Justice and Freedoms is willing to resume dialogue with the SDJ, provided that it stops such practices. The Government states that the SDJ has clearly chosen to continue using the same kinds of defamatory statements and blocking tactics.
407. Regarding the allegations of harassment of SDJ union leaders, the Government states that the matter concerns several offences committed by one administrative official in a senior court position in the capital. According to the Government, the official attempted to abuse his authority to impose the viewpoints of his union (calling for a strike) on his subordinates who were members of other unions. The Government considers that to be a violation of public servants' freedom to choose their affiliation and whether to engage in strike action. The union official was therefore asked to provide an explanation. The Government observes that the fact that the official holds a senior position in the court administration, alongside several SDJ members, is itself proof that the Ministry of Justice and Freedoms respects union action and does not take it into account when making managerial appointments.
408. On the subject of the allegations that it refused to provide trade union leaders with the facilities to perform their union duties and participate in the work of their executive bodies, the Government denies any such conduct by the Ministry of Justice and Freedoms and encloses a copy of Circular No. 49 4/1 which the Ministry sent to its departments concerning the applicable procedures for approval of absences for union representatives.
409. In response to the allegations that the SDJ deputy general secretary was suspended from duty, the Government states that the action was taken in the general interest and has nothing to do with his union affiliation. It notes that the individual in question has lodged

an appeal against the administrative decision, the outcome of which is still pending, and that it is now a matter for the courts to decide.

- 410.** As regards the alleged assaults on SDJ members and leaders, including its general secretary, during demonstrations, the Government emphasizes that several members of the SDJ attempted to prevent individuals intending to participate in a debate from entering the meeting premises in the town of Ifrane. The same members also attempted to occupy the premises by force. The security forces were obliged to intervene, on the orders of their superiors, to ensure the safety of people and property but did not resort to excessive violence, contrary to what is stated in the complaint. According to the Government, if assaults were in fact perpetrated, the victims are entitled to take legal action.
- 411.** As regards the position of the “Moroccan rights coalition” towards the attacks allegedly suffered by the SDJ, the Government points out that the document appended to the complaint to support this assertion is merely a letter to the SDJ informing it that its complaint had been received and had been forwarded to the relevant bodies. The document in no way constitutes proof of the veracity of the attacks in question. The Government emphasizes that the “Moroccan rights coalition” has thus far not published any statements or viewpoints on the matter.
- 412.** On the subject of the deduction of pay for strike days from the participating public servants, the Government recalls, firstly, that the Committee on Freedom of Association considers that such a measure is not, in principle, inconsistent with the principles of freedom of association. The Government is of the view that it is allowed in most countries and has been recognized in many decisions in the Moroccan courts, such as the Agadir administrative court decision No. 183/2005, published on 20 April 2001, and the Rabat administrative court decision No. 208/07/05 of 17 October 2007.
- 413.** Lastly, in response to the allegation that the SDJ was denied the right to make statements in the media, the Government states that, while the union’s general secretary was prevented from participating in the “*En direct avec vous*” live television broadcast on the 2M channel alongside the Minister of Justice and Freedoms, that was not attributable to the Minister. The Government notes that the Minister had previously agreed to meet with the SDJ general secretary in the context of a broadcast by the Aswat radio station on 31 October 2012. However, the union leader had made inappropriate remarks on that occasion. The Minister of Justice and Freedoms wanted to avoid any recurrence of that situation on the 2M TV broadcast in order to preserve the reputation of the judiciary in national public opinion.
- 414.** The Government declares that the dialogue with all the trade unions in the justice sector will remain open, as long as they act in good faith and respect national and international rules governing dialogue and collective bargaining.

C. The Committee’s conclusions

- 415.** *The Committee observes that the present case deals with allegations concerning the exclusion of the Democratic Union of the Judiciary (SDJ) from collective bargaining by the ministry concerned despite it being the most representative organization in the justice sector, acts of discrimination against its leaders, and the violent dispersal by the security forces of peaceful demonstrations organized by the trade union in question.*
- 416.** *The Committee notes the statement from the complainant organization, the Democratic Federation of Labour (FDT), that an affiliated organization, the SDJ, is the most representative trade union in the justice sector, in terms of both the number of members and the number of representatives elected to joint committees (65 per cent of*

representatives at the regional level and 99 per cent at the central and national levels). According to the complainant, the SDJ's status as the most representative trade union and the absence of any legislation concerning collective bargaining in the public service make it the logical choice of organization to represent the judiciary in labour relations and any collective bargaining in the sector. However, the complainant objects that not only has the SDJ been excluded from a body responsible for determining working conditions for judiciary officials but in the wake of growing hostility towards the SDJ from the authorities, the Ministry of Justice and Freedoms announced its decision to cease all dialogue with the trade union via an official statement in December 2012.

417. The Committee notes the Government's reply, the first part of which refers to the ratification of all the ILO Conventions concerning the right to collective bargaining, the legislative framework and national practice relating to the determination of representative organizations and collective bargaining in the public service. The Committee notes the explanations of the respective roles in collective bargaining of the Higher Council of the Public Service, which has an advisory capacity regarding bills and regulations, the joint committees and the Public Sector Committee. The Committee notes that, in the context of collective bargaining, four collective agreements have been signed between the Government and employers' and workers' organizations since 1996. The Committee observes that although the Government recognizes a legal lacuna concerning the determination of the most representative trade union organization in the public sector, it claims that this is remedied by the Trade Unions Bill, section 37 of which provides that, in order to enjoy the status of the most representative trade union, the union concerned must poll at the national level in the public sector at least 6 per cent of the total number of staff representatives within the joint administrative committees.
418. The Committee notes that, despite this framework, the roots of the dispute that gave rise to the present complaint lie in the work of the High Authority for the Reform of the Judicial System. The complainant objects that in 2011 the Government deliberately excluded the SDJ from the work of the High Authority for the Reform of the Judicial System, despite the fact that this body was supposed to be dealing with issues having a direct impact on the working conditions of court clerks and judiciary officials in general. The union's requests to participate in the work of the High Authority were reportedly not accepted. The Committee notes the Government's explanations that the High Authority comprised 40 individuals from various sectors whose appointment was unrelated to any considerations of category, profession or trade union. The mandate of the High Authority was to prepare a draft agreement for an extensive, comprehensive reform of the judicial system and had no decision-making or negotiating powers. Its role was limited to setting the main lines of the reform and gathering opinions and proposals for submission to regional debates. According to the Government, the real discussion on the main lines of the reform took place in 11 national debates held in the various regions of Morocco. The Office for the Administration of National Dialogue, an umbrella organization comprising more than 180 public and political establishments and those linked to political parties, as well as representatives of unions and associations, officially invited the SDJ to join. However, the Government states that the union flatly rejected the offer in several communications, on the pretext that it was not represented in the High Authority.
419. The Committee observes that the dispute between the SDJ and the Ministry of Justice and Freedoms took on a further dimension with the signature of an agreement between the Ministry and other trade unions in the justice sector. The Government indicates that the Ministry in question has always sought ongoing dialogue with all trade unions. In this way the Ministry has tried to institutionalize central and regional dialogue with all the trade unions in the sector with a view to seeking solutions to their claims, some of which are identical while others are different, through two mechanisms: (a) central dialogue organized within the Central Committee comprising representatives of the Ministry and the

national offices of the trade unions; and (b) regional dialogue organized regularly in the regional dialogue committees between the regional directors in the country's appeal courts and the regional or local offices of the trade unions. The Minister of Justice and Freedoms held a meeting with the national trade union offices on 1 February 2012 after the new Government had been formed. A series of meetings on sectoral dialogue was launched, including three with the SDJ. The Committee notes the Government's statement that, despite the regular dialogue and positive results, the SDJ adopted a negative position and chose to boycott the meetings in response to the conclusion of the agreement signed with the other two trade unions.

420. The Committee observes that the complainant alleges to have been affected not just by the signature of an agreement with the trade unions but also politically, criticizing the Minister of Justice and Freedoms for constantly refusing to convene the periodic meetings provided for in a framework agreement adopted in 2006 for the organization of labour relations in the justice sector or to convene negotiations called for by the trade unions as provided for in a more recent agreement, notwithstanding written requests made by the SDJ.
421. Noting the statements by the complainant and the Government on the issue of representativeness and collective bargaining in the justice sector, the Committee sees fit to recall, with regard to the issues of representativeness and the rights of minority trade unions, that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company or bargaining unit are both compatible with the principles of collective bargaining contained in the relevant ILO Conventions. The Committee observes that the current system in the justice sector is not one that confers exclusive rights on the most representative trade union.
422. As regards the criteria to be applied to determine the representativeness of organizations entitled to negotiate, this representativeness should be based on objective and pre-established criteria. The Committee notes the Trade Unions Bill, section 37 of which provides that, in order to enjoy the status of the most representative trade union, the union must poll at the national level in the public sector at least 6 per cent of the total number of staff representatives within the joint administrative committees. It requests the Government to keep it informed with regard to the adoption of the bill in question and the application thereof in the justice sector.
423. Moreover, the Committee recalls, with regard to the agreements concluded, that collective bargaining implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured, at the very least for the duration of the agreement, such agreement being the result of compromises made by both parties on certain issues, and of certain bargaining demands dropped in order to secure other rights which were given more priority by trade unions and their members. If these rights, for which concessions on other points have been made, can be cancelled unilaterally, there could be neither reasonable expectation of industrial relations stability nor sufficient reliance on negotiated agreements. Agreements should be binding on the parties since mutual respect for the commitments undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 939, 940 and 941]. Taking account of the wide-ranging representativeness of the SDJ, which the Government does not dispute, the Committee requests the Government to take the necessary measures to pursue collective bargaining with the trade union concerned and to keep it informed of the measures taken in this regard.

424. *The Committee notes the Government's statement that the SDJ attempted to disrupt the meetings during each regional debate and to rally its members to occupy the premises in which the debates were being held. The information provided as part of the complaint shows that the various demonstrations referred to by the complainant to protest at the violent action of the security forces were organized during the regional debates concerning the reform of the judicial system.*
425. *The Committee notes the complainant's claims that the Government violently suppressed peaceful demonstrations organized by the SDJ. By way of example, the security forces violently dispersed a peaceful sit-in in front of Al Akhaoayne school in Ifrane on 19 October 2012, injuring SDJ general secretary Mr Abdessadek Saidi, who had to be admitted to the clinic in Fes for a week (the complainant attached a medical certificate). The security forces also violently dispersed a group of trade union activists during a peaceful demonstration in front of the court of first instance in Tangier on 1 February 2013. The victims, who are named by the complainant, had to be taken to hospital by ambulance. Lastly, on 9 February 2013, a group of trade union leaders were forcibly detained by the management and security staff of the Mohammedia social welfare association's summer resort.*
426. *The Committee notes that the Government in its reply recalls that the SDJ deliberately chose to be confrontational by urging its members to obstruct the movements of the Minister of Justice and transporting hundreds of members to prevent the Minister from reaching the court of first instance in Ouyoune (southern Morocco), which was hosting a meeting of the High Authority for the Reform of the Judicial System. The union also disrupted the normal activities of the court, thereby infringing the rights of citizens, litigants and court clerks. The Government declares, with regard to the alleged assaults on SDJ members and leaders, including its general secretary, that it was in the context of clashes initiated by SDJ members, who tried to prevent debates being held and to occupy the meeting premises, that the security forces were obliged to intervene, on the orders of their superiors, to ensure the safety of people and property but without resorting to excessive use of violence, contrary to the claim made in the complaint.*
427. *The Committee deeply regrets the allegations that public demonstrations for defending professional interests are violently dispersed or result in the use of violence on both sides. It further notes with deep concern the statement that the general secretary and other SDJ leaders were subjected to such violence that they required urgent treatment by the medical services. In view of the conflicting accounts received, the Committee considers it useful to recall, with regard to trade unions' right to demonstrate, that workers should enjoy the right to peaceful demonstration to defend their occupational interests. Although the right of holding trade union meetings is an essential aspect of freedom of association, the organizations concerned must, like other persons or organized collectivities, observe the general provisions relating to public meetings and respect the law of the land. 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., paras 133, 140 and 143]. The Committee trusts that the Government and the complainant organization will ensure that these principles are observed in the future.*
428. *The Committee notes that, according to the Government, if assaults were in fact perpetrated, the victims are entitled to take legal action. The Committee requests the Government or the complainant organization to keep it informed of any cases brought*

before the judicial authorities in the wake of the alleged violence, and of the outcome thereof.

429. The Committee notes the allegations of reprisals against SDJ leaders and members for organizing or taking part in strikes. The Committee notes in particular the statement that the SDJ deputy general secretary was suspended without cause from his position as head of the registry at the court of first instance of Ksar el-Kebir (a city in northern Morocco) barely a week after a demonstration was organized during a visit from the Minister of Justice. The Committee notes that, according to the Government, the suspension was undertaken in the general interest and had nothing to do with the official's trade union affiliation; the individual concerned has lodged an appeal against the administrative decision, the outcome of which is still pending. The Committee requests the Government to provide further information on the specific reasons for the suspension of the SDJ deputy general secretary, to keep it informed of the outcome of the judicial proceedings instituted by the latter and to send a copy of the final ruling.
430. As regards the withholding of pay from striking SDJ activists, the complainant points out that this is without any legal basis since, although the Labour Code provides for the suspension of an employment contract during a strike, there is no similar instrument governing the public service. The FDT also objects that the Government is taking advantage of the legal lacuna to obstruct the exercise of the right to strike by withholding pay only from the members of certain unions. The Committee notes that the Government maintains in its reply that such a principle is accepted in most countries and has been recognized in numerous rulings in the Moroccan courts, including the Agadir administrative court decision No. 183/2005, published on 20 April 2001, and the Rabat administrative court decision No. 208/07/05 of 17 October 2007. The Committee recalls that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles [see **Digest**, op. cit., para. 654]. However, if the salary deductions are applied to the activists of only one trade union, as alleged in the present case, and all the unions have taken part in the strike, this situation would constitute de facto discriminatory treatment against the union concerned, affecting the principles of freedom of association. The Committee requests the Government to send its observations in reply to the complainant's allegations and, if such actions are proven, to put a stop to them immediately.
431. The Committee notes the complainant's allegation that in January 2013 the Minister of Justice declined to engage in debate with the SDJ general secretary in a television broadcast. At the last minute the management of the television channel reportedly informed the union leader that the Minister of Justice had refused to meet with him in the same TV studio. The complainant argues that this was a denial of a trade union leader's right of expression and of his right to use the public media. The Committee notes that the Government indicates in its reply that the Minister of Justice and Freedoms had previously agreed to meet with the SDJ general secretary in the context of a broadcast by the Aswat radio station on 31 October 2012 but on that occasion the union leader had made inappropriate remarks. The Minister of Justice and Freedoms wanted to avoid any recurrence of that situation on the 2M TV broadcast in order to preserve the reputation of the judiciary in national public opinion. As regards freedom of expression and access to the media, the Committee merely wishes to recall that the right to express opinions through the press or otherwise is an essential aspect of trade union rights [see **Digest**, op. cit., para. 155].
432. Lastly, the Committee notes the communiqué of 27 December 2012 from the Ministry of Justice and Freedoms officially declaring a boycott of SDJ activities and refusing any dialogue. According to the complainant, this communiqué effectively prevents the union from developing its activities, in violation of the Constitution of Morocco and universal

principles of freedom of association. The Government, for its part, declares that the dialogue will remain open with all the unions in the justice sector as long as they act in good faith and respect national and international rules governing dialogue and collective bargaining. Such a public communiqué from a government ministry calling for a boycott of a representative trade union constitutes, for the Committee, a serious violation of the principles of freedom of association. The Committee considers, in view of the number of workers represented by the SDJ in the justice sector and with a view to easing tension, that the Government should endeavour to take action to ensure that dialogue is renewed between the Ministry of Justice and Freedoms and the trade union, so that the views of all the unions are taken into account as part of the current reform. The Committee requests the Government to indicate any measures taken in this regard.

The Committee's recommendations

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

- (a) Noting with deep concern the statement that the leaders of the Democratic Union of the Judiciary (SDJ) were subjected to such violence that they required urgent treatment by the medical services, the Committee requests the Government or the complainant organization to keep it informed of any cases brought before the judicial authorities following the alleged violence, and of the outcome thereof.**
- (b) The Committee requests the Government to provide further information on the specific reasons for the suspension of the SDJ deputy general secretary, to keep it informed of the outcome of the judicial proceedings instituted by the latter and to send a copy of the final ruling.**
- (c) The Committee requests the Government to send its observations in reply to the complainant's allegations that salary deductions for strike action are applied to the activists of only one trade union and, if such actions are proven, to put a stop to this discriminatory treatment immediately.**
- (d) The Committee notes the Trade Unions Bill, section 37 of which provides that, in order to enjoy the status of the most representative trade union, the union must poll at the national level in the public sector at least 6 per cent of the total number of staff representatives within the joint administrative committees. It requests the Government to keep it informed with regard to the adoption of the bill in question and the application thereof in the justice sector.**
- (e) The Committee requests the Government to take the necessary measures to pursue collective bargaining with the SDJ and to keep it informed of the measures taken in this regard.**
- (f) The Committee considers, in view of the number of workers represented by the SDJ in the justice sector and with a view to easing tension, that the Government should endeavour to take action to ensure that dialogue is renewed between the Ministry of Justice and Freedoms and the trade union, in order to continue collective bargaining and so that the views of all the**

unions are taken into account as part of the current reform. The Committee requests the Government to indicate any measures taken in this regard.

CASE NO. 3038

DEFINITIVE REPORT

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

- **Industri Energi (IE)**
- **Norwegian Confederation of Trade Unions (LO)**
- **Confederation of Organised Workers in the Energy Sector (SAFE) and**
- **Confederation of Vocational Unions (YS)**

Allegations: The complainant organizations allege that the Government intervened in collective bargaining and imposed compulsory arbitration, thereby ending strike action

434. The complaint is contained in a communication dated 19 August 2013 from Industri Energi (IE), the Norwegian Confederation of Trade Unions (LO), the Confederation of Organised Workers in the Energy Sector (SAFE) and the Confederation of Vocational Unions (YS).

435. The Government sent its observations in a communication dated 19 December 2013.

436. Norway 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), as well as the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

437. In their communication dated 19 August 2013, IE, LO, SAFE and YS allege the breach of ratified Conventions Nos 87 and 98 in 2012 when the Government intervened in collective bargaining and imposed compulsory arbitration, although the conditions for instituting compulsory arbitration were not fulfilled.

438. The complainants indicate that IE is affiliated with LO and SAFE is affiliated to YS. SAFE is Norway's only pure federation of trade unions for workers in the energy sector and currently has approximately 11,500 members working in operating companies on the Norwegian Shelf, oil service businesses, rig-owning shipping companies, maintenance companies, catering companies and at landing and processing terminals onshore. IE is the fourth largest trade union affiliated to LO and has close to 60,000 members working in the industry and energy sector in Norway, organized vertically in the oil business. LO is Norway's largest union confederation, and more than 880,000 members are organized in unions that are its affiliates. YS is a politically independent federation for workers and has an affiliation of 21 different unions, with a total of approximately 227,000 members from all sectors of working life.

- 439.** The complainants allege, in connection with wage bargaining in 2012, that they gave notice of termination of their collective wage agreements with the employers' organization, the Norwegian Oil and Gas Association (OLF). IE terminated its agreements ("The Agreement for Operating Companies (Operatoravtalen)", "The Catering Agreement (Forpleiningsavtalen)" and "The Drilling Companies' Agreement (Borebedriftsavtalen)") on 27 January 2012. SAFE terminated "The Oil Collective Agreement – Shelf (Oljeoverenskomsten sokkel)" on 13 December 2011. All agreements expired on 31 May 2012. The complainants further add that negotiations for new collective wage agreements commenced on 21 May 2012, but that negotiations broke down as early as 22 May.
- 440.** On 24 May 2012, both unions gave notice of collective work stoppage, but only for a limited number of members employed by three employers, involving 610 union members. The complainants allege that the strike would only have affected installations on four fields of all the fields on the Norwegian Shelf. Notice of limited collective work stoppage was given with a view to reducing the impact of the strike, so that it would not provide the authorities with any grounds for compulsory arbitration, while also ensuring that the strike would be effective.
- 441.** On 4 June 2012, the complainants allege that the OLF gave notice of collective lockout, which was to involve all of the unions' members at all installations on the Norwegian Shelf. According to the complainants, this would have brought all production of oil and gas on the Norwegian Shelf to a halt, resulting in serious financial consequences for both the oil companies and the Norwegian State as the lockout would also have stopped the supply of gas to the European continent. In the complainants' view, the objective of the notice of lockout was to exert pressure with a view to compulsory arbitration. According to the complainants, the experience from previous instances of compulsory arbitration has shown that in stipulating new collective wage agreements, the National Wage Board has almost invariably regulated the technical supplements to the agreements.
- 442.** Following unsuccessful mediation efforts, the complainants add that, on 19 June 2012, a second notice was given for the final extension of the notice of collective work stoppage for the 610 members who were concerned by the first notice. On 22 June 2012, the parties commenced compulsory mediation in pursuance of the regulations of the Labour Disputes Act, which was interrupted on 24 June 2012, with the strike being initiated on the very same day. On 5 July 2012, the OLF gave a second notice for the final extension of the notice of collective lockout, which was to apply to all installations on the Norwegian Shelf, thus involving a complete stop to all production of oil and gas. The lockout was to take effect on 10 July 2012.
- 443.** The complainants allege that, after completion of a round with voluntary mediation without any positive outcome, the Government announced on 10 July 2012 that a decision would be made stipulating that collective wage bargaining for the contractual issues at stake would be carried out by means of compulsory arbitration. The strike was ended on 10 July 2012, and on 10 August 2012, a royal decree was passed, with a Provisional Ordinance regarding compulsory arbitration for the labour dispute in question. The National Wage Board made its decision regarding the dispute on 11 October 2012, thereby setting out the terms of the new collective wage agreement.
- 444.** In the complainants' view, the Government employed compulsory arbitration firstly due to the financial consequences of a lockout for the Norwegian economy, and, secondly, because of the harmful effects that a halt in production would have for the confidence in Norway as a reliable supplier of oil and gas. The complainants refer to the Royal Decree of 10 August 2012 which cites as grounds for the decision to impose compulsory arbitration that: (i) even a brief halt in the production of oil and gas may have serious consequences

for the confidence in Norway as a reliable supplier of those products; and (ii) a full halt to production of oil and gas would have serious consequences for the Norwegian economy, including significant spillover effects on the supplier industry with very serious financial and societal consequences. The Decree further states that the Ministry of Labour concluded that the labour dispute between the workers' organizations IE, SAFE, and Lederne and the employers' organization OLF must be resolved without any further industrial action as the parties' bargaining situation is at a deadlock and that industrial action is likely to be of considerable duration, and therefore considered it necessary to suggest intervention by means of compulsory arbitration. According to the Decree, Norway has ratified several ILO Conventions which protect freedom of association and the right to strike (Conventions Nos 87, 98 and 154) according to which intervention in the right to strike is only permitted subject to stringent conditions, namely if the strike threatens the life, health or personal security of the entire or large parts of the population. Moreover, Article 6, point 4, of the Council of Europe's Social Charter contains a corresponding provision that protects the right to strike. However, Article 6 must be seen in conjunction with Article G, which allows statutory restrictions on the right to strike that are necessary in a democratic society to protect the rights and freedoms of others or to protect the public interest, national security, or morals in society. The Decree concludes with the view of the Ministry of Labour that the decision to impose compulsory arbitration in the labour dispute at issue is within the scope of the Conventions Norway has ratified and that, if any discrepancy is proven between international conventions and Norway's use of compulsory arbitration, it feels that it is, in any case, necessary to intervene in the industrial action.

- 445.** The complainants stress that Conventions Nos 87, 98 and 154 have all been ratified by Norway and that Norway has not invoked any exceptions regarding the scope and extent of the Conventions, and is thus bound by this content. The complainants submit that the Norwegian state has breached its obligations following from the Conventions through its decision to implement compulsory arbitration in the labour dispute between IE/SAFE and the OLF in the summer of 2012.
- 446.** The complainants indicate that Norwegian labour legislation recognizes the principle of the right to freedom of association, collective bargaining rights and the right to strike. For workers in the private sector, the procedures for collective bargaining are outlined in the Act relating to Labour Disputes of 27 January 2012 (No. 9) which contains rules regarding collective work stoppage, compulsory mediation and the obligation to keep industrial peace. The complainants state that, in the context of collective wage bargaining, the parties are entitled to engage in means of industrial action in accordance with a fixed procedure which has been followed. Norwegian law does not contain any general rule limiting the right to strike; any legislation limiting the right to strike is adopted for each individual case. According to the Labour Disputes Act, trade unions have an obligation to keep the industrial peace in connection with collective bargaining until compulsory mediation has been completed. If mediation does not produce any results, both parties have a legal right to institute measures of industrial action such as strike, lockout, or other means of industrial action, in order to force the other party into acceptance of a collective wage agreement. In the complainants' view, through the use of compulsory arbitration, the Government has impeded the use of legal means of industrial action in the labour dispute at hand. Norway has no permanent legislation regarding compulsory arbitration; an act imposing compulsory arbitration is adopted on an ad hoc basis, as in the present case.
- 447.** The complainants allege that, in this case, the situation is peculiar in the sense that IE and SAFE initiated a strike within very circumscribed limits so as to avoid any major harmful financial impact on the Norwegian economy, and so as to prevent gas deliveries to Europe from suffering. The complainant organizations believe that it is evident that this strike alone would not have resulted in the use of compulsory arbitration and that it may be assumed that it was the OLF's threat to close down production on all installations on the

Norwegian Shelf that persuaded the authorities to implement compulsory arbitration. In their opinion, the decision to implement compulsory arbitration is the Government's response to the lockout notification, which was the employers' "application" for compulsory arbitration with a view to bringing the strike to an end.

- 448.** The complainant organizations recall that the basis for the decision to impose compulsory arbitration is, firstly, that the lockout would have had a considerable negative impact on the Norwegian economy with significant spillover effects on the supplier industry, and that such a development would have resulted in serious financial and societal effects, and, secondly, that the shutdown of the production of oil and gas on the Norwegian Shelf would have impaired confidence in Norway as a supplier of oil and gas. This second point applies first and foremost to the security of the gas supply to Europe. The complainants underline that the Government did not indicate that the shutdown of installations would result in security implications that would have necessitated compulsory arbitration. In their view, the grounds that were given are in fact not tenable, and in any case inadequate to justify compulsory arbitration. According to the complainants, a shutdown of all activities on the Norwegian Shelf would of course influence the Norwegian economy through lost income, directly by virtue of the State's role as owner, and through taxation of the oil companies, but it is primarily the oil companies themselves, which would have been affected through the loss of income. Furthermore, IE and SAFE allege that: (i) a shutdown of certain duration would only have resulted in putting off the income (and the State's financial position is clearly sound enough to continue to operate without this income for some time); (ii) the lapse of this income would not have put the Norwegian economy at risk. According to the complainants, the income from the country's oil activities is not directed into the Norwegian economy, but is handled in a special manner so as to avoid any effect on the Norwegian economy. The State has thus, through the income from the oil sector, built up one of the world's largest fortunes known as the Government Pension Fund Global. In the event of a critical situation, the State would have been able to allocate assets from this fund to its activities; (iii) the supplier industry would not have been hurt seriously by a stop in the petroleum activities of certain duration; neither the employers nor the State have shown that there is any basis for such an assumption; (iv) moreover, it is difficult to imagine that the employers could have tolerated a loss of income of 1.8 billion Norwegian krone (NOK) per day for a long time; the unions' demands were largely concerned with reallocating a fund owned by the trade unions and managed according to certain guidelines, and had been rejected primarily not for financial reasons but for reasons of principle; and (v) although Norway is a large exporter of oil, a short-term lapse of approximately 5–7 per cent of the total global export would not have had any significance at all for the confidence Norway enjoys as a reliable producer and exporter of oil. As Norway is the second largest exporter of gas in Europe, gas buyers are well aware of the rules that govern collective bargaining between workers and employers in Norway, a system whose general principles are well known in all the countries that are supplied with gas by the operators on the Norwegian Shelf. When entering into the major contracts for gas supply which were agreed on in the 1980s, and which stand for an important part of the overall export volume, allowances were made for gas supplies being affected by industrial action. The gas sellers therefore undertook to build up physical stores of gas so as to secure gas supplies in the event of any interruption to production on the Norwegian Shelf. This illustrates that the gas buyers have been aware of the fact that interruptions to the supply of gas may occur as a result of industrial action, and preparations have been made to remedy such situations. It would rather be the confidence in the employers themselves that would suffer as a result of a meaningless lockout which they have themselves implemented, and which affects their own customers.
- 449.** The complainants indicate that according to Conventions Nos 87 and 98, the Norwegian state has an obligation to ensure the right to free collective bargaining prohibiting circumstances that limit this right, and to ensure that matters that circumscribe the right to

freely organize and the right to strike are banned. According to the ILO, the imposition of compulsory arbitration may be permitted in the following circumstances: (1) if the parties themselves request this; (2) if the labour dispute comprehends public services involving public servants acting on behalf of the State; and (3) if the dispute concerns “essential services” in the narrow sense of the term, that is, services whose disruption would expose the life, health or personal security of all or parts of the population. The complainants conclude that none of these conditions were met when, on 10 August 2012, the Government decided to end the industrial action through the use of compulsory arbitration. In their view, the decision to impose compulsory arbitration is, therefore, a plain violation of the Norwegian State’s obligations pursuant to the Conventions referred to above. This violation is all the more serious as the Government should be familiar with the legal position outlined above, and because its reasoning underlying the decision set out in the Decree confirms that the State purposefully set aside its international obligations by disregarding the ILO’s interpretation of when compulsory arbitration may be employed, considering that it is the State itself that decides when it considers it “necessary” to intervene with compulsory arbitration in instances of industrial action.

B. The Government’s reply

- 450.** In its communication dated 19 December 2013, the Government indicates that the 2012 conflict in the oil sector arose in connection with the bargaining rounds for new collective agreements. The negotiations between the OLF and the workers’ organizations IE and Lederne on the revision of the Shelf agreements on the fixed oil installations in the North Sea were unsuccessful. These agreements cover some 7,100 employees on the permanent installations on the Norwegian Shelf and apply to people who work for the oil companies on the permanent installations as operators in drilling and in catering.
- 451.** The Government adds that the mediation was concluded without result on 24 June 2012 at 3.30 a.m., and the unions then initiated a strike involving 708 of their members. This was a limited strike and led to the Oseberg Field Centre, the Heidrun and Skarv fields and Floatel Superior being shut down. Statoil then also shut down the Veslefrikk, Huldra, Brage and Oseberg C platforms, as they were dependent on being able to transport oil and gas via the Oseberg Field Centre. The production loss was some 15 per cent of Norwegian oil production and 7 per cent of the gas production, and the costs of the production loss were about NOK150 million per day in deferred revenues. On 5 July 2012, the employers gave notice of a lockout for the rest of the employees covered by the Shelf agreement (some 6,500 employees), effective from the early hours of Tuesday, 10 July. If the lockout were initiated, this would entail a full shutdown of all oil and gas production on the Norwegian Shelf.
- 452.** The Government states that, to avoid such a dramatic course of events, both the National Mediator as well as the Minister of Labour made attempts to bring the parties back to the negotiating table. The parties did meet, but the meetings were unsuccessful. The situation was perceived as deadlocked. On this background, the Minister of Labour summoned the parties to a meeting on Monday, 9 July at 11.30 p.m., informing them that in order to prevent the notified lockout from taking effect, the Government would intervene in the conflict imposing compulsory arbitration. Following the Minister’s request, the employees agreed to end the ongoing strike, and the employers agreed not to implement the notified lockout. The Government further adds that, as Parliament (Stortinget) was not in session at this time, the intervention was made by the Government by Provisional Ordinance on 10 August 2012 pursuant to article 17 of the Norwegian Constitution. According to the Provisional Ordinance, the disputes were to be solved by the National Wage Board (nine members, of which three neutral, two from the largest workers’ and employers’ organizations and two from each of the conflicting parties). The Board’s decision, which

would have the effect of a collective agreement between the parties, was made on 11 October 2012.

453. According to the Government, an escalation of the conflict through the OLF's notified full lockout from 10 July 2012 would have entailed a full shutdown of all oil and gas production on the Norwegian Shelf. On 8 July, the Ministry of Labour received an impact assessment of a total shutdown from the Ministry of Finance and the Ministry of Petroleum and Energy, which is quoted in the Provisional Ordinance of 10 August 2012. Accordingly, a labour dispute affecting the reliability of supply to Europe would have serious consequences both for Norway's standing as a reliable supplier and the reputation of gas as a safe energy source (it supplies about 20 per cent of European gas). It would also have serious economic consequences, as it is estimated that a labour dispute affecting the entire Norwegian Shelf will entail a reduction of NOK55 billion per month in the production value of oil, at current oil prices and that, as most of the production is exported, the estimates in the Revised National Budget 2012 indicate that a full shutdown will have a negative impact of almost NOK50 billion per month on the international trade balance. Moreover, the Federation of Norwegian Industries had indicated that the supplier industry would also suffer greatly from a lockout on the shelf and that oil industry suppliers would probably have to lay off 10–15,000 employees.
454. The Government states that it thus concluded that even a short interruption to all oil and gas production would be highly detrimental to the view of Norway as a credible supplier of oil and gas. Furthermore, a full shutdown of production would have a serious impact on the Norwegian economy, including major ripple effects on the supplier industry. The Government therefore decided that the labour disputes between IE, SAFE and Lederne and the OLF must be resolved without further industrial action, and imposed that the disputes be solved by the National Wage Board. The status of the negotiations between the parties was a deadlock, and thus there were prospects of a long-term conflict.
455. According to the Government, the right to industrial action is not expressly embraced by the Articles of Conventions Nos 87 and 98 (ratified by Norway), but is considered as part of the principles of freedom of association. The Government asserts that, according to the ILO standards as interpreted by the ILO bodies, the consequences of a labour conflict may become so serious that interventions in or restrictions on the right to strike are compatible with the principles of freedom of association. Limitations or prohibitions against strikes are thus accepted when the strike involves: (1) public servants engaged in the administration of the State; and (2) essential services in the strict sense of the term, that is to say services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. According to the ILO interpretation, these damaging effects must, in addition, be clear and imminent.
456. The Government states that Norway put great effort in being in compliance with its obligations according to the ILO Conventions. Industrial action is a means intended to put pressure on the opposite party. A country acknowledging the right to industrial action has to endure the inconveniences and damaging consequences entailed by such actions. The Government believes, however, that there must be limits as to how extensive consequences society has to bear: the oil conflict in the summer of 2012 is an example of a conflict where these limits are reached. There are long traditions in Norway for collective bargaining and collective agreements, across the labour market. The right to organize and the right to collective bargaining are fundamental parts of Norwegian law, and are supported by legislation with procedural rules and institutions for resolving disputes. There are no legal restrictions as to who can form and join unions and organizations, and there is no interference from the authorities concerning the constitution and rules of the trade unions and organizations and their activities. The right to industrial action is part of the right to free collective bargaining. No prohibition against strike or lockouts exists, except

for the armed forces and senior civil servants, even if these groups nevertheless enjoy the right to organize and the right to collective bargaining. However, according to the Government, to balance this wide, unrestricted freedom of association and collective bargaining, including the right to industrial action, there is a broad consensus developed in Norway that the Government has an ultimate responsibility for preventing labour conflicts from causing serious damage. If the Government finds that a conflict can have so damaging effects that life, personal safety, health or vital public interest are endangered, it submits a separate bill to the Parliament, proposing the industrial action in question to be forbidden, and that the conflict is to be solved by the National Wage Board.

457. The Government confirms the assertion of the complainants that the limited strike initiated by IE and SAFE only affecting a few installations would not alone have resulted in compulsory arbitration, as opposed to a total closedown. The Government underlines that its attention was attached to the damaging effects of the conflict, and not to whether the damaging effects were caused by a strike or a lockout. When the employers announced this dramatic extension of the conflict, the Government had to consider the subsequent damaging effects, which were of such dimensions that they could not be disregarded. The evaluation the Government must make is the same, regardless of whether these effects are caused by a strike or a lockout.

458. As regards the complainants' indication that, unlike in the past, no security implications have been invoked to justify the intervention, the Government affirms that a shutdown of oil installations at sea always entails challenges but that the parties engaged in the oil activity on the Shelf have gained experience over the years and improved procedures and routines as well as regulations on safety crew. These factors have reduced the safety implications attached to close down processes. The Government maintains, however, that a total closedown of all oil and gas production would have had economic consequences of vast dimensions as well as severely impaired confidence in Norway as a supplier of oil and gas. For the Government, it is not correct to say that the employers would have suffered the largest losses. Due to diverse factors, including tax regulations, the employers' losses would have been small compared to those of the Norwegian State, and consequently Norwegian society. Moreover, the Government reminds that although economic consequences brought upon third parties at the outset are not considered relevant as to justify interventions, it is rather difficult to acknowledge this to be the case regardless of the size of the losses. To the Government, the limit was reached at the imminent prospect of a total closedown of all Norwegian oil and gas production. With respect to the contested consequences for the supplier industry, the Government states that there was no reason to mistrust the Federation of Norwegian Industries, the largest and most dominant employers' organization, when they warned about a substantial number of layoffs (10–15,000 workers) in the supplier industry. The Norwegian supplier industry competes on a challenging international market. Lastly, Norway's credibility as a large and reliable supplier of oil and gas, as well as consideration for oil and gas deliveries to its trading partners in Europe, were of great importance in the Governments' assessment of the situation. A full stop in production would have an impact on the world market, and, according to the Government, the mere prospect of a total halt in the Norwegian oil and gas production would bring about a rise in oil and gas prices. The Government reiterates that it is vital to Norway to maintain its reputation as a reliable supplier, and a total halt in production could put it at risk. Moreover, concerning the reference made by the complainants about European gas buyers' knowledge of the Norwegian collective bargaining system, the Government affirms that buyers of oil and gas are far more on the alert than alleged by the claimants. The Government had been contacted at an early stage for information regarding developments in the labour dispute. A total close down of all Norwegian oil and gas production would entail consequences to the Norwegian society of such a magnitude that was impossible to disregard, and an intervention should be regarded as being within the scope of the ILO Conventions.

- 459.** As regards the quotation of the Provisional Ordinance which reads: “If a contradiction should be identified between international conventions and Norway’s use of compulsory arbitration, the Ministry of Labour believes that it is necessary in any event to intervene in the conflicts”, the Government rejects that this passage can be interpreted in the manner suggested by the claimants. This passage is included in all bills proposing compulsory arbitration due to internal legal conditions, and is necessary due to technical legal interpretation reasons because of the position of international law in the Norwegian legal system. The Government reiterates that, in its opinion, the intervention in this conflict was in conformity with the principles of freedom of association as protected by the ILO Conventions Nos 87 and 98.
- 460.** The Government indicates that the Provisional Ordinance referred the dispute for resolution by the National Wage Board, a permanent voluntary arbitration body appointed pursuant to the National Wage Board Act (Act No. 10 of 27 January 2012). The Board is at the disposal of the workers’ and employers’ organizations if they wish to have recourse to it in order to settle labour conflicts. In each case, the board has nine members, of whom five are appointed by the Government for a period of three years. Three of the permanent members are neutral, that is independent of the Government and of the employers’ and workers’ organizations. Two members represent the interests of the employers and employees, respectively. These members of the board, however, act in a more advisory capacity and have no right to vote. The parties in the individual dispute each nominate two members of the board. It is only one of the members from each party and the three neutral members of the board who are entitled to vote. The National Wage Board Act has comprehensive provisions as to how the board is to deal with the disputes submitted to it. The provisions aim at ensuring that the proceedings shall be as thorough and conducted as properly as possible. The parties appear with authorized representatives as spokesmen and are entitled to present to the board all the information they believe to be of significance for the dispute. The board itself can obtain all necessary additional information.
- 461.** The Government emphasizes that, in its capacity as an arbitration body, the National Wage Board is a free-standing and independent body which deals with and resolves the conflicts submitted to it against the background of the material presented by the parties in the individual conflict. Thus, the Board has many features in common with a court of justice. Accordingly, it is not bound by the Government’s incomes policy. It decides the disputes brought before it on an independent basis and applies its own discretion. According to the Government, the complainants in this case are strong and influential organizations, and the workers on the Shelf are among the best paid workers in Norway. They are part of the Norwegian system of collective bargaining, cooperation and co-determination. When the Government intervened in the present case, the parties to the Shelf agreements had carried out collective bargaining for revised agreements, they had finished compulsory mediation with the National Mediator, and the unions had been on strike for 16 days to put pressure behind their demands. After the intervention, the dispute was settled by the National Wage Board, where the conflicting parties also were represented, with two members each. Thus, the workers’ organizations have had good opportunities to protect their interests both before and after the ban on industrial action.
- 462.** Finally, the Government indicates that it is of the opinion that the intervention in the conflict in the oil sector in the summer of 2012 was in conformity with the principles of freedom of association. The decision of imposing compulsory arbitration was in compliance with ILO Conventions Nos 87 and 98 and the workers’ organizations have also had a wide range of opportunities to safeguard their occupational interests.
- 463.** The Government also transmits the comments made by the Norwegian Oil Industry Association in a letter dated 21 October 2013 according to which Norway has ratified several ILO Conventions that protect freedom of association and the right to strike

(Conventions Nos 87, 98 and 154), and following the interpretation of the Conventions by the bodies of the ILO, strict requirements govern intervention in the right to strike, but intervention is nevertheless allowed if the strike puts life, health and personal safety at risk for the whole or part of the population. Moreover, Article 6, point 4, of the Council of Europe's Social Charter contains a corresponding provision that protects the right to strike. However, Article 6 must be seen in conjunction with Article G, which allows statutory restrictions on the right to strike that are necessary in a democratic society to protect the rights and freedoms of others or to protect the public interest, national security, or morals in society. Furthermore, the OLF adds that, in a decision dated 10 April 1997 (Supreme Court Report Rt. 1997/580), the Norwegian Supreme Court considered the validity of a provisional arrangement of 1 July 1994 regarding a ban on strikes in the oil industry. In the decision, the Supreme Court confirmed that the practice of compulsory arbitration to resolve labour disputes when indicated by weighty public interests, is not in violation of the general constitutional principles of law. In relation to the ILO Conventions and the European Social Pact, the Supreme Court pointed out that the interpretation of the Conventions as regards the right to strike has not been resolved with binding effect, and that Norway has never accepted that use of compulsory arbitration – when indicated by weighty public interests – would be in violation of the Conventions. The Supreme Court also did not find that Article 11 in the European Human Rights Convention constituted an obstacle to the use of compulsory arbitration. The matter was subsequently appealed to the European Court of Human Rights which, in a decision of 27 June 2002, rejected the appeal as clearly baseless, that is to say with reference to the serious impacts the strike would have on society. There was also a reference made to the fact that the oil sector is in a unique position wherein stopping of deliveries could have an immediate and serious impact on many countries, particularly in Europe.

C. The Committee's conclusions

464. *The Committee notes that, in the present case, the complainant organizations allege that the Government intervened in collective bargaining and imposed compulsory arbitration via the enactment of the Royal Decree containing a Provisional Ordinance on 10 August 2012, thereby ending strike action in the oil sector.*
465. *The Committee notes from the brief chronology provided by both the complainant organizations and the Government that: (i) the 2012 bargaining rounds for new collective wages agreements between the unions and the OLF were unsuccessful, and mediation was interrupted on 24 June 2012; (ii) a limited strike was called by the complainants on the same day involving 600–700 union members and partially affecting the installations on the Norwegian Shelf; (iii) on 5 July 2012, the OLF gave notice of a total lockout (effective on 10 July 2012), which was to apply to over 6,500 employees and all installations on the Norwegian Shelf, thus involving a complete stoppage of all production of oil and gas; (iv) following unsuccessful mediation, the Government announced on 10 July 2012 its decision to intervene in the conflict by imposing compulsory arbitration; (v) thereafter, the unions agreed to end the ongoing strike and the employers agreed not to implement the notified lockout; and (vi) on 10 August 2012, a royal Decree containing a Provisional Ordinance was adopted which referred the dispute to the National Wage Board for resolution.*
466. *The Committee notes, however, that the complainants and the Government differ in the interpretation of the necessity for such government intervention. The Committee notes that the Government considers its decision to refer the dispute to compulsory arbitration to be entirely consistent with ILO standards and puts forward several arguments to justify it, stating that a full shutdown of all oil and gas production on the Norwegian Shelf would have had serious economic consequences, such as: (i) a reduction of NOK55 billion per month in the production value and a negative impact of almost NOK50 billion per month*

on the international trade balance; (ii) it would have affected the reliability of gas supply to Europe; (iii) it would have been highly detrimental for the reputation and trust of other countries in Norway as a reliable supplier of oil and gas; and (iv) it would have had major ripple effects on the supplier industry (for example, probable layoff of 10–15,000 employees). The Government adds that, in order to balance the wide, unrestricted rights to freedom of organization and collective bargaining in Norway, if it finds that a conflict has so damaging effects that life, personal safety, health or vital public interest are endangered, it usually submits a separate bill to the Parliament proposing the strike or lockout in question to be forbidden and the conflict to be solved by the National Wage Board. In the present case, a total shutdown of all Norwegian oil and gas production would, in the Government's view, entail consequences to the Norwegian society of such a magnitude that an intervention should be regarded as being within the scope of the ILO Conventions.

467. In contrast, the Committee notes that the complainants submit that: (i) the strike called on 24 June 2012 only involved a limited number of union members (610) and affected installations on four fields of all the fields on the Norwegian Shelf; (ii) notice of a circumscribed collective work stoppage was given with a view to reducing the impact of the strike, so that it would not provide the authorities with any grounds for compulsory arbitration, while also ensuring that the strike would be effective; (iii) the notification of a full lockout by the OLF in response to the strike notice constituted the employers' "application" for compulsory arbitration, which was almost immediately accepted by the Government; (iv) the grounds given by the Government for imposing compulsory arbitration are not tenable because it is mainly the oil companies which would have been affected through the loss of income, as a close down would have merely resulted for the State in suspension of income without putting the Norwegian economy at risk, and because the confidence Norway enjoys as a producer and exporter would not have been damaged as oil and gas buyers are well aware of the rules that govern collective bargaining between workers and employers in Norway; and (v) the grounds given are in any case inadequate to justify compulsory arbitration. The Committee also observes that both parties concede that the argument of safety implications in case of a close down of installations was not invoked in the present case.

468. The Committee recalls that on multiple occasions in the past it has dealt with cases concerning compulsory arbitration in Norway, which was imposed in non-essential sectors through legislative intervention in the collective bargaining process thereby ending strike action (see in particular Case No. 1255 (234th Report), Case No. 1389 (251st Report) and Case No. 1576 (279th Report concerning the oil sector). The Committee observes that the Provisional Ordinance of 10 August 2012 prohibits the start or continuation of the work stoppage in the oil and gas sector and refers the dispute to the National Wage Board for compulsory arbitration (no information has been provided as to the outcome of this procedure). When considering the imposition of compulsory arbitration in the finance sector in Norway [see Case No. 2545, 349th Report, para. 1149], the Committee recalled that it was difficult to reconcile arbitration imposed by the authorities at their own initiative with both the right to strike and the principle of voluntary negotiation. It is bound to recall that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, that is, in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 564].

469. As to what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in the 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 [see **Digest** op. cit., para. 582]. The Committee further notes that by linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could effectively be impeded and that while the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service essential and thus the right to strike should be maintained [see **Digest** op. cit., para. 592]. Noting that regard must be had to the particular circumstances prevailing in a country, it is recalled that in other cases the Committee has not considered the petroleum sector to constitute an essential service within the strict sense of the term [see **Digest** op. cit., para. 587].

470. The Committee is sensitive to the arguments provided by the Government in the present case to justify its decision to refer the dispute to compulsory arbitration, in particular the estimated negative impact on the Norwegian economy, on the oil and gas supply to Norway's trade partners, on employment in the supplier industry and on Norway's reputation as a reliable supplier. The Committee further observes that, according to both the complainants and the Government, the limited strike action alone would not have resulted in the use of compulsory arbitration and that it was the OLF's threat to close down production on all installations on the Norwegian Shelf that persuaded the authorities to implement compulsory arbitration. As it has in a previous case concerning Norway [see Case No. 2545, 349th Report, para. 1151], the Committee expresses its concern at the complainants' statement that the notification of a full lockout by the OLF in response to the strike notice constituted the employers' "application" for compulsory arbitration, which was almost immediately accepted by the Government. While the impact which the declaration of a full lockout in the oil and gas sector may have had upon the assessment of the vast consequences upon daily life in Norway expected by the industrial action is no doubt a relevant national circumstance to be taken into account by the Committee, it is necessary for such impacts to go beyond mere interference with trade and commerce and to have endangered the life, personal safety or health of the whole or part of the population for resort to compulsory arbitration to have been warranted. The Committee notes that at the time of the government-imposed compulsory arbitration, the industrial action by the union was occurring but that the full lockout by employers, albeit of uncertain duration, had not yet commenced. On the material before it the Committee cannot conclude that, at the time of the Government's decision, the necessary broader impacts beyond trade and commerce had materialized such as to justify a preventative resort to compulsory arbitration banning the right to strike. Absent any further information from the Government, the Committee concludes that the legislative action taken by the Government at that time, which stipulated in its section 4 the prohibition of starting or continuing a work stoppage to resolve the dispute, thus applying both to the ongoing strike and the notified lockout, was inconsistent with the principles of freedom of association.
471. The Committee is further of the opinion that, with a view to addressing the Government's concerns, it would be desirable if, in cases of industrial action like the one before it, which would have brought a service that is not essential in the strict sense of the term but a very important sector in the country to a standstill, the concerned parties, with the participation of the Government if necessary, could reach an agreement on minimum services sufficient to address the concerns of the Government about the consequences of a full shutdown of the oil and gas sector, while preserving respect for the principles of the right to strike and the voluntary nature of collective bargaining [see Case No. 1576, 279th Report, para. 114]. The Committee recalls that a minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population; such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life

*or normal living conditions of the whole or part of the population; in addition, workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities [see **Digest**, op. cit., para. 610]. In the present case, the Committee regrets that, despite the recommendations it has previously and repeatedly made in this regard in similar cases concerning Norway, the Government has failed to negotiate a minimum service in the sector with the parties concerned or, in the event of a disagreement as to the number and duties of the workers concerned, to refer the matter for determination by an independent body.*

- 472.** *In light of the principles enounced above and convinced that an advance agreement as to what constitutes minimum service to be maintained in the event of industrial action would be more conducive to harmonious industrial relations in the oil and gas sector, the Committee firmly expects that, in the future, the Government will make every effort to refrain from having recourse to legislation imposing compulsory arbitration with the effect of bringing to an end all industrial action in a sector unless it is objectively established that at the time of such action the sector is essential, and that in any event it will endeavour to promote and give priority to free and voluntary collective bargaining as the means of determining employment conditions in the oil and gas sector. In this respect, the Committee encourages the Government to examine the possibility of introducing a minimum service in the oil and gas sector in the event of industrial action, the scope or duration of which may result in irreversible damages [see Case No. 2545, 349th Report, para. 1152].*

The Committee's recommendations

- 473.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) In light of the principles enounced in its conclusions, the Committee firmly expects that, in the future, the Government will make every effort to refrain from having recourse to legislation imposing compulsory arbitration with the effect of bringing to an end all industrial action in a sector where at the time of such action there has been no clear and imminent threat to the life, personal safety or health of the whole or part of the population and that is thus not essential, and that in any event it will promote and give priority to free and voluntary collective bargaining as the means of determining employment conditions in the oil and gas sector.*
 - (b) Regretting that, despite the recommendations it has previously and repeatedly made in this respect, the Government failed to negotiate a minimum service in the sector with the parties concerned, and convinced that such a way forward would be more conducive to harmonious industrial relations in the oil and gas sector, the Committee encourages the Government to examine the possibility of introducing a minimum service in the oil and gas sector in the event of industrial action, the scope or duration of which may result in irreversible damages; in this regard, the trade union organizations should be able to participate, in the same way as employers and the public authorities, in defining the minimum service, and any disagreement as to the number and duties of the workers involved shall be settled by an independent body.*

CASE NO. 3018

INTERIM REPORT

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

***Allegations: The complainant organization
alleges anti-union actions by the management of
the Pearl Continental Hotel Karachi and the
failure by the Government to ensure the
principles of freedom of association as set out in
Conventions Nos 87 and 98***

474. The complaint is contained in a communication of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) dated 8 April 2013.
475. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on three occasions. At its March 2014 meeting [see 371st Report, para. 6], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any information.
476. 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

477. In a communication dated 8 April 2013, the complainant organization IUF denounces new gross violations of trade union rights by the Government of Pakistan in connection with the anti-union actions by the management of the Pearl Continental Hotel Karachi. Although the Government has ratified Conventions Nos 87 and 98, there is a long history of Government failure with respect to the violations of fundamental rights by the management of the hotel. The Pearl Continental Karachi Hotel Employees Union is affiliated to the IUF through its membership in the Pakistan Hotel, Restaurant, Clubs, Tourism, Catering and Allied Workers' Federation.
478. The complainant recalls that, in June 2003, responding to a 2002 complaint brought by the IUF on behalf of the Pearl Continental Karachi Hotel Employees Union (Case No. 2169), the Committee had requested the Government to (among other measures) instruct the competent labour authorities to rapidly undertake an in-depth investigation of the anti-union dismissals at the hotel and, if it was found that there had been anti-union discrimination, to ensure that the workers concerned were reinstated in their posts, without loss of pay. It further requested the Government to initiate meetings between the hotel management and the trade union with a view to avoiding violations of trade union rights in the future. The Committee concluded that grave violations of union rights had been committed by the hotel management and local authorities, instructed the Government to

fully investigate the incidents of police detention, violence and harassment of union members and requested that the Government report back to the ILO. The complainant further recalls that on 7 April 2009, the IUF submitted additional information on Case No. 2169 requesting the Committee to call on the Government to implement the Committee's recommendations of June 2003. According to the complainant, the Government has not done so, and there have been new attacks on workers, their union and their rights by the hotel management in collusion with the police.

- 479.** The complainant also recalls that, as reported under Case No. 2169, the Sindh Labour Court ordered on 26 February 2011 the reinstatement of the dismissed members and officers of the Pearl Continental Hotel Karachi Employees Union. Management filed an appeal against this order before the Sindh Labour Appellate Tribunal. On 15 January 2013, the Sindh Labour Appellate Tribunal rejected the appeal and upheld the order of the Labour Court. This decision applied to General Secretary Ghulam Mehboob and 19 other officers and members. The complainant also recalls that Ghulam Mehboob and Basheer Hussain had been dismissed for "absenteeism" while being held in jail on false charges, which were dismissed many years later. The Sindh Labour Appellate Tribunal also reinstated seven security guards whose reinstatement application had been declined by the Labour Court in February 2011.
- 480.** Following the reinstatement of the abovementioned union officers and members in January 2013, the union, certified as the hotel employees' collective bargaining representative, submitted a charter of demands for negotiation. Management's response was to ignore the request for negotiations and to again harass and victimize union members and officers.
- 481.** Thus, on 25 February 2013, Shazia Nosheen, a restaurant cashier with 15 years of service, was detained for hours in the General Manager's office. Her mobile phone was taken from her, and she was pressured under threat of dismissal to sign a false statement. Ms Nosheen refused and filed the following day a police complaint for illegal detention. On 27 February 2013, she was suspended on the basis of a false disciplinary action dated 25 February – the day she had been detained and threatened by the management. On 21 March 2013, Ms Nosheen approached the court to register a complaint (known as First Information Report) against management on the ground of these incidents. On that day, a judge directed police to register her complaint, which she recorded at Artillery Police Station on 22 March 2013. When she received her copy of the report, however, it was dated 24 March 2013. The report date had been falsified by two days to allow the police to collude with hotel management to produce a police complaint against Ms Nosheen dated 22 March 2013 before Ms Nosheen's police complaint. With the support of the union the case is being brought to the provincial ombudsman.
- 482.** On 25 February 2013, the day Shazia Nosheen was forcibly detained by security staff and managers, waiter and union member Syed Farhan Ahmed Zaidi was sequestered by management and pressured to sign a statement against Shazia Nosheen. Two days later, he was disciplined and suspended. On 1 March 2013, while accompanying his children to school, two men attempted to kidnap him and severely beat him (see pictures enclosed to the complaint).
- 483.** On 4 March 2013, management issued show cause notices to union treasurer Mazhar Iqbal and three active members.
- 484.** The union presented a fresh charter of demands, but management failed to appear for the conciliation hearing. On 11 March 2013, the conciliator declared the process a failure, clearing the way for the union to take legal strike action.

485. On 13 March 2013, security guards attempted to stop union General Secretary Ghulam Mehboob and a group of members from entering the hotel (it should be noted in this context that the hotel has not contested the January 2013 reinstatement order of the Sindh Labour Appellate Tribunal, which means that Mr Mehboob and the other union members were legally employed by the hotel at the time). Security guards and company thugs attacked and beat them.
486. These actions prompted the workers to declare the strike, to which they were legally authorized. Police raided the hotel and unleashed a baton charge against the strikers in the basement, where the changing room is located. More than 50 union members and officers were arrested and taken to the police station bound in ropes (see pictures enclosed to the complaint); 45 have been charged with criminal offenses. Additional legal charges have been filed against five union officers (including General Secretary Mehboob), who were only released on bail after 14 hours of detention. The charges carry fines and imprisonment of up to two years.
487. After the mass arrests and the release of the workers on bail, the union learned that management planned to terminate many more active union members and officers. The union immediately approached the Karachi bench of the National Industrial Relations Commission (NIRC) to inform them of the pending dismissals. On 20 March 2013, the NIRC issued stay orders prohibiting hotel management from taking any action against the 62 workers (see names annexed to the complaint). Management, however, ignored the order and violated the law by using security guards to forcibly prevent these workers from entering the hotel. The union filed a contempt of court application before the NIRC, and, on 27 March 2013, the NIRC issued contempt of court notices to six management officers ordering them to appear on 8 April 2013.
488. In the complainant's view, the allegations illustrate that hotel management and police are colluding to repress the exercise of trade union rights at this establishment. The union has identified four police officials directly implicated in attacking and arresting striking workers (Shahid Hayat, Deputy Inspector General Karachi South; Saddar Malik Ahsan, Deputy Superintendent of Police; Ali Raza, Station House Officer; and Arshad Janjua, Assistant Sub-Inspector). The complainant considers that, ten years after the 2003 recommendations made by the Committee in the framework of Case No. 2169, the Government has refused to respond adequately to the Committee or implement its recommendations, has failed to ensure respect for Conventions Nos 87 and 98 and continues to deny workers at the abovementioned hotel their rights. The IUF therefore urgently calls on the Committee to recall to the Government of Pakistan its responsibilities and the need to take prompt corrective measures.

B. The Committee's conclusions

489. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's allegations even though it has been requested several times to do so, including through an urgent appeal.*
490. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
491. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from*

unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].

492. The Committee notes that, in the present case, the complainant organization alleges anti-union actions by the management of the Pearl Continental Hotel Karachi and the failure by the Government to ensure that Conventions Nos 87 and 98 are applied in practice. While welcoming the information provided by the complainant that the reinstatement orders issued by the Labour Court in February 2011 for 20 dismissed members and officers (including General Secretary Ghulam Mehboob) of the Pearl Continental Hotel Karachi Employees Union (see Case No. 2169, 360th Report, para. 87), were upheld on 15 January 2013 by the Sindh Labour Appellate Tribunal which also reinstated seven security guards whose reinstatement application had been initially declined, the Committee cannot but express its concern at the new series of allegations of anti-union violence, harassment and dismissals in the above hotel establishment and at the apparent recurrence of similar infringements of trade union rights in one and the same workplace. The Committee recalls that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government.
493. In particular, the Committee notes the following allegations: (i) on 25 February 2013, union member Shazia Nosheen was detained in the manager's office, her mobile phone was confiscated and she was pressured under threat of dismissal to sign a false statement; subsequently, she was suspended on the basis of a false disciplinary action; (ii) on the same day, union member Syed Farhan Ahmed Zaidi was sequestered by management and pressured to sign a statement against Shazia Nosheen, then he was disciplined and suspended, and subsequently he was the subject of a kidnapping attempt and severe beating; (iii) on 13 March 2013, General Secretary Ghulam Mehboob and a group of union members were prevented from access to the hotel and then attacked and beaten by security guards and company thugs; (iv) following the declaration of a lawful strike on the same day, police raided the hotel and beat the strikers; more than 50 union members and officers were arrested, taken to the police station in ropes and then released on bail; 45 were charged with criminal offenses, and additional legal charges carrying fines and imprisonment of up to two years were filed against five union officers (including General Secretary Mehboob) who were only released on bail after 14 hours of detention; and (v) 62 union officers and members were dismissed on 20 March 2013.
494. In the absence of the Government's reply, the Committee wishes to generally recall certain principles that have a bearing on the present case. With respect to the alleged beatings of several union members and officers by company security guards, as well as harassment and coercion of two union members by management, the Committee wishes to generally recall 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. Moreover, in the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 44 and 50]. As regards the alleged use of force by police against the strikers, the Committee emphasizes that the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order [see **Digest**, op. cit., para. 647]. Concerning the arrest, detention,

and criminal charges filed against union officers and members having participated in the strike, the Committee recalls that the arrest of trade unionists and leaders of employers' organizations may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities; that the peaceful exercise of trade union rights (strike and demonstration) by workers should not lead to arrests and deportations; and that the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association [see **Digest**, op. cit., paras 67, 673 and 671]. In relation to the alleged dismissals following the strike and the ensuing arrests, the Committee has, in certain cases, found it difficult to accept as a coincidence unrelated to trade union activity that heads of departments should have decided, immediately after a strike, to convene disciplinary boards which, on the basis of service records, ordered the dismissal not only of a number of strikers, but also of members of their union committee. The Committee recalls that the dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98, and highlights that arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve [see **Digest**, op. cit., paras 794, 661 and 674].

495. *In view of the seriousness of the complainant's allegations (including detention, sequestration and beatings), the Committee urges the Government to provide its observations on these allegations without further delay. In light of the above, the Committee expects the Government to make every effort to ensure respect for these principles in the aforementioned hotel establishment. In particular, as it has done in previous cases concerning Pakistan (see Case No. 2902, 365th Report, para. 1121; and Case No. 2169, 331st Report, paras 639–640), the Committee requests the Government to institute immediately an independent inquiry into the following allegations: (i) the harassment of union members; (ii) the acts of violence on 25 February and 13 March 2013 against several union members, General Secretary Ghulam Mehboob and workers participating in a strike; (iii) the subsequent brief arrest of 50 union officers and members and filing of criminal charges against them; and (iv) the anti-union dismissals of 62 union officers and members following the strike; with a view to fully clarifying the facts, determining responsibilities, punishing those responsible and preventing the repetition of such acts. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up or redress measures taken. It firmly expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their swift reinstatement in their previous positions without loss of pay and the immediate dropping of all pending criminal charges.*

496. *Furthermore, the Committee requests the Government to make efforts to obtain the comments of the company, via the employers' organization concerned so that the Committee may examine the allegations in this case in full knowledge of the facts.*

The Committee's recommendations

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

- (a) The Committee urges the Government to provide its observations on the complainant's serious allegations without further delay.*

- (b) *In light of the principles enounced in its conclusions, the Committee expects the Government to make every effort to ensure respect for these principles in the aforementioned hotel establishment. In particular, as it has done in previous cases concerning Pakistan, the Committee requests the Government to institute immediately an independent inquiry into the following allegations: (i) the harassment of union members; (ii) the acts of violence on 25 February and 13 March 2013 against several union members, General Secretary Ghulam Mehboob and workers participating in a strike; (iii) the subsequent brief arrest of 50 union officers and members and filing of criminal charges against them; and (iv) the anti-union dismissals of 62 union officers and members following the strike; with a view to fully clarifying the facts, determining responsibilities, punishing those responsible and preventing the repetition of such acts. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up or redress measures taken. It firmly expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their swift reinstatement in their previous positions without loss of pay and the immediate dropping of all pending criminal charges.*
- (c) *The Committee requests the Government to make efforts to obtain the comments of the company, via the employers' organization concerned, so that the Committee may examine the allegations in this case in full knowledge of the facts.*

CASE NO. 2648

INTERIM REPORT

Complaints against the Government of Paraguay presented by

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

Allegations: The complainant organizations allege anti-union dismissals and transfers, as well as acts of violence against a female union member

498. The Committee last examined this case at its November 2012 meeting, when it presented an interim report to the Governing Body [see 365th Report, paras 1124–1132].

499. The Government sent its observations in a communication dated 12 March 2014.

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

A. Previous examination of the case

- 501.** The Committee recalls that at its meeting in November 2012, when examining the allegations of anti-union dismissals and transfers, as well as acts of violence against a female union member during a peaceful demonstration, it made the following recommendations [see 365th Report, para. 1132]:

- (a) The Committee deeply deplores that, despite the time that has elapsed since the beginning of this case, the Government has not provided the information requested, despite being invited to do so, including by means of an urgent appeal.
- (b) The Committee once again strongly requests the Government to keep it informed of the employment status of the SOECAPASA union official who, according to the complainants, was dismissed.
- (c) The Committee again strongly urges the Government to take the necessary measures to initiate without delay an investigation into the alleged transfer of SOECAPASA General Secretary, Mr Gustavo Acosta, and the mass transfer of workers following peaceful demonstrations held in order to inform the general public of the company's situation. The Committee requests the Government to keep it informed of developments in this regard. It also requests the Government, in consultation with the social partners, to ensure effective national procedures for the prevention or sanctioning of anti-union discrimination.
- (d) The Committee again strongly urges the Government to keep it informed with regard to the investigation carried out following the complaint lodged with the national police concerning the assault against the worker, Ms Juana Erenio Penayo.

B. The Government's reply

- 502.** In its communication of 12 March 2014, the Government indicated that the enterprise Cañas Paraguayas SA (CAPASA) reported that: (1) the union officials that were dismissed in 2007 and 2008 have been reinstated; (2) that the General Secretary of the union, Mr Gustavo Acosta, was transferred in 2007 and appointed Head of carpentry and that he continues in that post; and (3) in 2008, the Board of Directors issued Decision No. 290, providing for the transfer of 23 public officials from several sectors to other branches as part of a staff reshuffle.

C. The Committee's conclusions

- 503.** *The Committee recalls that the allegations that remained pending in this case concern the anti-union dismissal of a union official from the enterprise CAPASA, the transfer of SOECAPASA General Secretary, Mr Gustavo Acosta, and the mass transfer of workers following peaceful demonstrations held in order to inform the general public of the company's situation, as well as the physical assault against the worker Ms Juana Erenio Penayo de Sanabria, by one of the enterprise managers (the complainant organization enclosed with its own complaint a copy of the complaint lodged with the national police).*
- 504.** *As regards the alleged dismissal of a union official, the Committee notes that the Government reports that the union officials that were dismissed in 2007 and 2008 have been reinstated.*

505. As regards the alleged transfer of the SOECAPASA General Secretary and the mass transfer of workers following peaceful demonstrations, the Committee notes that the Government reports that: (1) the General Secretary of the union was transferred in 2007 and appointed Head of carpentry and that he continues in that post; and (2) in 2008, the Board of Directors issued Decision No. 290, providing for the transfer of 23 public officials from several sectors to other branches as part of a general staff reshuffle. The Committee takes note of this information and will not pursue the examination of these allegations unless the complainants provide new information.
506. Lastly, the Committee regrets that the Government has not sent the information that it had requested with regard to the investigation carried out following the complaint lodged with the national police concerning the physical assault against the worker Ms Juana Erenio Penayo, and strongly urges the Government to keep it informed in this regard.

The Committee's recommendation

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

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

CASE NO. 2715

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

Complaint against the Government of the Democratic Republic of the Congo presented by the Congolese Labour Confederation (CCT)

Allegations: The complainant alleges anti-union discrimination against the President of the national trade union delegation at the Customs and Excise Office (OFIDA), and especially his dismissal

508. The Committee last examined this case at its November 2011 meeting, when it presented an interim report to the Governing Body [see 362nd Report, paras 1426–1437, approved by the Governing Body at its 312th Session (November 2011)].
509. The complainant organization supplied additional information in communications dated 24, 27 and 30 July and 1 October 2012, 29 March, 30 August and 26 September 2013, and 1 February 2014. The Government sent partial information in a communication dated 28 January 2013.

510. At its October 2013 meeting [see 370th Report, para. 11], the Committee noted that a technical assistance mission from the Office visited the country in July 2013 to gather relevant information on the case.

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

A. Previous examination of the case

512. In its previous examination of the case in November 2011, the Committee made the following recommendations [see 362nd Report, para. 1437]:

- (a) The Committee deeply deplores that, despite the time that has elapsed since the presentation of the complaint in April 2009, the Government has still not replied to the complainant's allegations, even though it has been requested several times, including through two urgent appeals, to present its comments and observations on the allegations and its response to the recommendations made by the Committee in its previous examination of the case. The Committee notes with regret that the Government continues to fail to comply, despite assurances given to the President of the Committee at a meeting held in June 2011, and expects the Government to be more cooperative concerning this case and invites it to avail itself of the technical assistance of the Office.
- (b) Recalling that the responsibility for applying the principles of freedom of association rest ultimately with the Government, the Committee urges the Government to take all the steps at its disposal, without delay, to follow up the decision of the General Labour Inspectorate to reinstate all members of the trade union delegation of OFIDA (now the DGDA), and to ensure Mr Lubamba Kabeya is reinstated in his post and is paid the wages that are in arrears and all benefits due to him.
- (c) The Committee requests that the Government provide its comments on the allegations of DGDA interference in the trade union elections held in 2009, and to ensure that all future DGDA electoral processes comply with the principles of non-interference referred to above.

B. Additional information from the complainant organization

513. In communications dated 24, 27 and 30 July and 1 October 2012, 29 March, 30 August and 26 September 2013, and 1 February 2014, the Congolese Labour Confederation (CCT) reports once again on the various approaches that it has continued to make to the different authorities in the country to secure implementation of the General Labour Inspectorate's decisions to rehabilitate all the members of the trade union delegation of the Customs and Excise Department (DGDA), formerly OFIDA, and in particular to reinstate Mr Lubamba Kabeya in his post eight years after his dismissal. The CCT again denounces the problems that exist in relation to implementation of the General Labour Inspectorate's decisions, even though the Ministry of Justice has been requesting the Prosecutor-General's assistance with this matter since November 2010, and denounces the glaring impunity enjoyed by the DGDA management in this matter. In its most recent communication, the complainant denounces the status quo as proof of the Government's blatant refusal to cooperate with the International Labour Organization.

C. The Government's reply

514. In its communication of 28 January 2013, the Government indicates that its information is supplied further to consultations with the DGDA inter-union association composed of 11 representative trade unions. According to the information collected, Mr Lubamba Kabeya held trade union office at the DGDA between 1999–2005. Elections were held in 2005 but he was not nominated as a candidate by his union, the Trade Union Confederation of Congo (CSC). Mr Kabeya subsequently disputed the election results, even though these were validated by the inter-union association and his own union.
515. According to the Government, Mr Lubamba Kabeya then refused to attend work despite repeated calls to do so from the personnel division, which resulted in the OFIDA board members dismissing him for dereliction of duty on 18 July 2006. The Government adds that Mr Lubamba Kabeya returned to the DGDA in March 2009 as a representative of another trade union organization, the CCT, the complainant in the present case, which failed to win any seats in the elections held that year. The Government states that the DGDA confirmed that it paid agreed salary arrears of US\$10,000 to Mr Lubamba Kabeya in 2005.

D. The Committee's conclusions

516. *The Committee notes with interest that the Government accepted a technical assistance mission from the International Labour Office to gather information on the various cases that have been examined by the Committee over the years without any real progress being made in following up on its recommendations. The Committee noted the report of the technical assistance mission concerning the present case and welcomes the Government's collaboration. It expects that any recommendations that it makes will be acted upon in the same spirit.*
517. *The Committee recalls that this complaint, which was presented in April 2009, deals with allegations of reprisals since March 2005 against trade union delegates at the Customs and Excise Office (OFIDA), in particular the President of the union delegation, Mr Lubamba Kabeya, for going on strike, and the alleged persistent refusal of the Director of the DGDA, formerly OFIDA, to implement Labour Inspectorate Decision No. 22/METPS/IGT-JLL/JMK/003/2010 of 18 June 2010 invalidating the suspensions and dismissals of the trade union delegates and also the results of the union elections held at the DGDA in 2005 and 2009.*
518. *The Committee notes the continuing supply of information from the complainant organization concerning the problems it faces in securing the rehabilitation of all the members of the OFIDA trade union delegation of 2005, in particular the reinstatement of Mr Lubamba Kabeya in his position, and the invalidation of the union elections held in 2005 and 2009, in accordance with the General Labour Inspectorate decision. The CCT also continues to condemn the apparent impunity enjoyed by the person largely responsible for the situation, the DGDA Director-General, who persists in refusing to implement the General Labour Inspectorate decision. In its most recent communication, the complainant denounces the status quo as proof of the Government's blatant refusal to cooperate with the International Labour Organization.*
519. *The Committee further notes the Government's observations on the present case received in January 2013. The Government states that it obtained information from the inter-union association comprising 11 representative trade unions currently operating at the DGDA. According to this information, Mr Lubamba Kabeya held trade union office within the DGDA between 1999–2005. Elections were held in 2005 but he was not nominated as a candidate by his union, the CSC. Mr Kabeya subsequently disputed the election results,*

even though these were validated by the inter-union association and his own union. Mr Lubamba Kabeya then refused to attend work for several months despite repeated calls to do so from the OFIDA personnel division, which resulted in the OFIDA board members dismissing him for dereliction of duty on 18 July 2006. The Government adds that Mr Lubamba Kabeya returned to the DGDA in March 2009 as a representative of another trade union organization, the CCT, the complainant in the present case, which failed to win any seats in the elections held that year. Lastly, the Government states that the DGDA confirmed that in 2005, at the request of Mr Lubamba Kabeya, it paid him the agreed salary arrears of US\$10,000.

520. The Committee noted the detailed information supplied to the technical assistance mission in relation to the present case. It observes differences of viewpoint and interpretation with regard to the texts presented by the parties concerned and also notes the contradictory statements of certain authorities. Further details are given below.
521. Mr Lubamba Kabeya had been an employee at OFIDA since 1990. He took up his post as assistant controller on 1 March 1990 in the Katanga provincial office. Mr Lubamba Kabeya stood for union election in 1998 as a representative of the CSC. He headed the CSC list and was elected as a union delegate. Since it was for this union to nominate the delegate to head the national union delegation, in accordance with the structure of the inter-union association at OFIDA, Mr Lubamba Kabeya was appointed President of the national union delegation at OFIDA. He was thus head of the national union delegation from 1998 to 2005, namely for two successive terms of office which, by all accounts, he duly completed.
522. Further to three decrees issued on 12 October 2004 by the Ministry of Labour and Social Welfare (No. 12/CAB.MIN/TPS/AR/NK/054 establishing procedures concerning representation and elections for workers in all types of enterprises and establishments; No. 12/CAB.MIN/TPS/VTB/053/2004 lifting the measures suspending trade union elections in all types of enterprises and establishments; and No. 12/CAB.MIN/TPS/055/12/2004 establishing the schedule for trade union elections in all types of enterprises and establishments), the OFIDA administration was due to meet the outgoing trade union delegation and the unions that wished to propose candidates for election to make the necessary arrangements.
523. The Committee observes that a strike was called in February 2005, after due notice was given, by the inter-union association at OFIDA. In the wake of this strike, a number of employees, including Mr Lubamba Kabeya and several other trade union delegates, were suspended for one month without pay in March 2005. The request of 7 April 2005 from the Minister of Labour and Social Welfare to lift the disciplinary measures was ignored.
524. With regard to the trade union elections held at OFIDA in 2005, the Committee notes that, according to the DGDA and the inter-union association currently operating there, elections have been held regularly with technical assistance from the General Labour Inspectorate at all stages of the electoral process. However, the Committee notes that the General Labour Inspectorate warned the OFIDA Chief Executive several times about the illegality of the elections held and called for them to be invalidated (correspondence of June and October 2005). It appears that OFIDA failed to meet this request. The Committee further notes correspondence from the Minister of Labour and Social Welfare dated 5 December 2005, further to a request from OFIDA, taking note of the installation of the new trade union delegation at OFIDA and indicating that, with harmonious labour relations established in the enterprise, there was no question of holding fresh elections; a position that was confirmed by the General Labour Inspectorate in a letter of September 2006.

525. *As regards the dismissal measures affecting the outgoing trade union delegates at OFIDA, in particular Mr Lubamba Kabeya, it is the Committee's understanding that the suspension without pay affecting all the delegates related to April 2005. Since the dispute, according to the DGDA, Mr Lubamba Kabeya no longer attended work (at the Kin-Est provincial office), despite letters of formal notice sent by the personnel division. Further to this lengthy absence, the Kin-Est provincial Director drew up a report of dereliction of duty in July 2006 and the OFIDA board members unanimously approved his dismissal on 18 July 2006. However, the Committee notes that, since November 2005, the General Labour Inspectorate refused to authorize OFIDA to terminate Mr Lubamba Kabeya's contract since, being in dispute with the institution and pending a final decision, he could not be said to be guilty of dereliction of duty. The Labour Inspectorate then reminded OFIDA of the need to comply with the applicable legal procedures and agreements. The Committee also notes the General Labour Inspectorate's statement that OFIDA's freeze on Mr Lubamba Kabeya's salary constitutes an abuse of power. Lastly, the Committee notes that, further to the dismissal announced in July 2006, the Labour Inspectorate again drew OFIDA's attention to the irregularity of the procedure and the need to overturn it in August 2006. It appears that OFIDA failed to meet this request.*
526. *The Committee observes that General Labour Inspectorate Decision No. 22/METPS/IGT-JLL/JMK/003/2010 of 18 June 2010 invalidating the suspensions and dismissals of trade union delegates and the results of the union elections held in 2005 and 2009 within the institution, merely confirms the positions adopted by the Labour Inspectorate in response to OFIDA's non-compliance. The Committee considers that it would not be appropriate for it to analyse the arguments for or against the decision of the General Labour Inspectorate, which is the competent authority regarding labour law and labour relations.*
527. *In the present case, the Committee can only note with deep concern that serious violations of freedom of association – in particular the freedom to perform trade union activities without discrimination and the freedom to elect representatives – clearly recorded by the General Labour Inspectorate at the time, have not been remedied for several years, despite repeated orders to do so. The Committee is astonished that an institution is able to disregard orders from a public authority for so many years without being penalized. The Committee notes with concern that these violations of freedom of association have had an extremely adverse impact on one trade union leader by depriving him of income since 2005.*
528. *In view of the above, the Committee repeats its previous recommendation and requests the Government to take all necessary steps immediately to implement the decision of the General Labour Inspectorate.*
529. *As regards the professional situation of Mr Lubamba Kabeya, the Committee expects a decision to be adopted to reinstate him immediately in his post with payment of all salary arrears and allowances due since 2005. If reinstatement is not possible, for objective and compelling reasons, adequate compensation should be paid as reparation for all the damage suffered and to prevent any repetition of such acts in the future, which presupposes penalties that are a sufficient deterrent against acts of anti-union discrimination. The Committee expects the Government to provide information as soon as possible on the measures taken.*
530. *As regards the Government's argument that the DGDA confirmed that it had paid Mr Lubamba Kabeya more than US\$10,000 in salary arrears in 2005, it is the Committee's understanding that this stemmed from the regularization of his status as staff representative within the OFIDA management committee from 1998 to 2005, and is unconnected with the salary freeze imposed on him since the start of the dispute in*

March 2005; something that the Labour Inspectorate has regarded as clearly constituting an abuse of power on the part of the institution.

- 531.** *Aware of the length of time that has passed since the electoral processes of 2005 and 2009, the Committee is bound to expect that the Government will ensure that all future DGDA electoral processes comply with the principles of non-interference by the employer in the choice of workers' representatives.*
- 532.** *The Committee notes that an appeal was filed with the Supreme Court of Justice in January 2011 against the General Labour Inspectorate's decision. The Committee requests the Government to inform it of the rules governing time limits for appeals against a General Labour Inspectorate decision and to keep it informed with regard to the receivability and, if applicable, the outcome of the appeal.*
- 533.** *The Committee requests the Government to implement quickly the recommendations set out below, in view of the human dimension of the case and the length of time that has passed since the case was presented.*

The Committee's recommendations

- 534.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) As regards the professional situation of Mr Lubamba Kabeya, the Committee expects a decision to be adopted to reinstate him immediately in his post with payment of all salary arrears and allowances due since 2005. If reinstatement is not possible, for objective and compelling reasons, adequate compensation should be paid as reparation for all the damage suffered and to prevent any repetition of such acts in the future, which presupposes penalties that are a sufficient deterrent against acts of anti-union discrimination. The Committee expects the Government to provide information as soon as possible on the measures taken.*
 - (b) Aware of the length of time that has passed since the electoral processes of 2005 and 2009, the Committee is bound to expect that the Government will ensure that all future DGDA electoral processes comply with the principles of non-interference by the employer in the choice of workers' representatives.*
 - (c) The Committee requests the Government to inform it of the rules governing time limits for appeals against a General Labour Inspectorate decision and to keep it informed with regard to the receivability and, if applicable, the outcome of the appeal lodged in January 2011 in relation to this case.*
 - (d) The Committee requests the Government to implement quickly the recommendations set out above, in view of the human dimension of the case and the length of time that has passed since the case was presented.*

Appendix

Case No. 2715

Technical assistance mission of the International Labour Office to the Democratic Republic of the Congo (14–20 July 2013)

A. Background

1. Since 2009, the Committee on Freedom of Association has received several complaints from different trade union confederations against the Government of the Democratic Republic of the Congo. To date, the Committee has received six complaints. In accordance with the Committee's procedures, the Government has been invited to provide its observations in response to the allegations made in the complaints. However, until very recently, the Government had not responded to any of the cases and, despite regular reminders by the Office, no observations, either on the allegations or on the Committee's recommendations, had been received by the Office. The Chairperson of the Committee on Freedom of Association has met with a government delegation to reiterate the importance of providing information and, in this regard, the Committee has proposed the technical assistance of the Office on several occasions.
2. The Government sent partial information on three of the six cases in January 2013 and accepted an assistance mission from the Office to gather information on the cases. The mission, comprising a legal specialist on freedom of association issues from the International Labour Standards Department and the international labour standards specialist from the ILO office in Yaoundé, visited Kinshasa from 14 to 20 July 2013.
3. The mission received the logistical support of the ILO office in Kinshasa and the cooperation of the Ministry of Labour to organize its schedule of meetings. The mission was therefore able to meet all the parties involved in the six cases being examined by the Committee, as well as the Minister of Labour and the Prime Minister's Chef de Cabinet (the Prime Minister himself was prevented at the last minute from attending the meeting).

B. Information gathered by the mission on Case No. 2715

4. With regard to Case No. 2715, the mission met Mr Lubamba Kabeya and the CCT President at the organization's headquarters. The mission also spoke to representatives of the Customs and Excise Department (DGDA) and representatives of the inter-union association operating within the institution.
5. According to the information gathered by the mission, Mr Lubamba Kabeya had been an employee at the Customs and Excise Office (OFIDA) since 1990. He took up his post as assistant controller on 1 March 1990 in the Katanga provincial office. Mr Lubamba Kabeya stood for union election in 1998 as a representative of the Trade Union Confederation of Congo (CSC). He headed the CSC list and was elected as a union delegate. Since it was for this union to nominate the delegate to head the national union delegation, in accordance with the structure of the inter-union association at OFIDA, Mr Lubamba Kabeya was appointed President of the national union delegation at OFIDA. He was thus head of the national union delegation from 1998 to 2005, namely for two successive terms of office which, by all accounts, he duly completed.
6. Further to three decrees issued on 12 October 2004 by the Ministry of Labour and Social Welfare (No. 12/CAB.MIN/TPS/AR/NK/054 establishing procedures concerning

representation and elections for workers in all types of enterprises and establishments; No. 12/CAB.MIN/TPS/VTB/053/2004 lifting the measures suspending trade union elections in all types of enterprises and establishments; and No. 12/CAB.MIN/TPS/055/12/2004 establishing the schedule for trade union elections in all types of enterprises and establishments), the OFIDA administrator at that time, Mr Albert Kasongo Mukonzo, convened for 7 March 2005, a consultation meeting with the outgoing trade union delegation and the trade unions represented at OFIDA during the 1998–2001 term of office, which was extended until 2004.

1. 2005 trade union elections at OFIDA

7. The mission notes discrepancies in the accounts of the elections, in particular as regards their legality.
8. The version put forward by the OFIDA management and the current inter-union association is that the signature of a Memorandum of Understanding on 25 March 2005 made it possible to fix the date of elections for 24 April 2005. Mr Lubamba Kabeya, the outgoing President of the national trade union delegation, was not included in the list of candidates drawn up by the CSC from among the 18 trade unions concerned. Further to the elections, new officers were chosen for the trade union delegation in June 2005, with Mr Nsungani Nlandu (UNTC) as President. At all stages of the electoral process in question, OFIDA received assistance from the General Labour Inspectorate. The DGDA maintains that Mr Lubamba Kabeya then disputed the results of the elections and made representations to the competent authorities (the Ministry of Labour and Social Welfare and the General Labour Inspectorate) several times to have the elections invalidated and to obtain legitimacy as president of the trade union delegation. He also refused to hand over the keys of the trade union offices, thereby forcing OFIDA to seek assistance from the authorities to hand over the premises to the new trade union delegation. The mission received from the DGDA, and the current inter-union association at the DGDA, the following documents in support of their allegations:
 - **Memorandum of understanding of 25 March 2005 concerning the trade union elections at OFIDA.** The memorandum was signed by the employer, the 18 trade unions that put forward candidates and certain members of the outgoing trade union delegation (signatures of four of the 11 members, according to the copy supplied).
 - **Record of the meeting of 23 June 2005 for the constitution of the OFIDA national trade union delegation.**
 - **Letter of 28 June 2005 from the OFIDA Director of Personnel** to the President of the national trade union delegation (Mr Lubamba Kabeya) inviting him to implement handover arrangements on 29 June 2005 with the new President of the elected national trade union delegation.
 - **Letter of 12 July 2005 from the OFIDA Chief Executive** to the Prosecutor-General requesting his assistance with regard to opening the offices of the OFIDA national trade union delegation in the absence of Mr Lubamba Kabeya, President of the outgoing trade union delegation, who was no longer attending work at the department concerned.
 - **Letter No. 12/CAB/MIN.TPS/DCA/MK/1034 of 9 December 2005 from the Minister of Labour and Social Welfare** to the OFIDA Chief Executive, acknowledging receipt of his information note of 15 November 2005 and declaring that “as far as the Ministry of Labour and Social Welfare is concerned, the trade union elections of 2005 at OFIDA were properly conducted and duly reported, and the newly elected trade union delegation was installed on 23 June 2005. As labour relations in the enterprise are harmonious, there is no question of holding fresh elections.”

- **Letter of 21 September 2006 from the General Labour Inspectorate** to a group of public sector trade unions referring to the letter of 9 December 2005 from the Minister of Labour and Social Welfare concerning the decision not to hold fresh union elections at OFIDA and declaring the matter closed.
9. The mission observes that Mr Lubamba Kabeya and the complainant organization, for their part, stated that in 2005 Mr Lubamba Kabeya was a member of the OFIDA management committee as a staff representative. In the wake of a legal strike launched in February 2005, the OFIDA management decided on 1 March 2005 to suspend 24 employees, including Mr Lubamba Kabeya and several other trade union delegates, for 30 days. Mr Lubamba Kabeya was subsequently transferred and dismissed for dereliction of duty. The penalties were reportedly upheld despite letters of protest from the inter-union association of that time and the CSC (letters of 4 and 29 March 2005), and representations from the Minister of Labour to the OFIDA Chief Executive calling for the lifting of the disciplinary measures (letter of 7 April 2005). During this period, the OFIDA management held the elections without consulting the outgoing trade union delegation as provided for by law (section 6(2) of Decree No. 12/CAB.MIN/TPS/AR/NK/054).
10. In addition, the complainant stated that there was no further opposition to the Memorandum of Understanding signed in March 2005 and the subsequent elections from the inter-union association of that time because of sudden collusion between certain members of the inter-union association and the management committee. The complainant provided the mission with the following documents in support of its statements:
- **Strike notice of 31 January 2005 from the OFIDA inter-union association** to the Minister of Finance.
 - **Letter of 3 March 2005 from the OFIDA inter-union association** to the Vice-President of the Economic and Financial Committee calling for mediation further to the decision of the OFIDA management committee to set up a crisis committee replacing the union delegation in reprisal for the strike called on 14 February 2005.
 - **Letter of 29 March 2005 from the CSC** to the OFIDA Chief Executive objecting to the suspension of the union delegates.
 - **Letter of 29 March 2005 from the CSC** to the Minister of Labour and Social Welfare describing the situation and calling on him to take action to remove the penalties imposed.
 - **Letter of 7 April 2005 from the Minister of Labour and Social Welfare, Mr Balamage N’Kolo**, to the OFIDA Chief Executive, referring to the conclusions of a working meeting on 1 April chaired by his *chef de cabinet* and calling for the lifting of the suspension imposed on the union delegates and workers owing to strike action. In his communication the Minister asked the Chief Executive to “cancel the suspension measures and if necessary reschedule the trade union elections”.
 - **Order No. 22/MTPS/IGT/0424/2005 of 14 June 2005 from the General Labour Inspectorate** to the OFIDA Chief Executive (with a copy to the Minister of Labour and Social Welfare and the Minister of Finance), in which the Labour Inspectorate makes the following observations: “(1) ignoring the recommendations of the Minister of Labour and Social Welfare, the management committee has hastily organized trade union elections without consulting the outgoing union delegation as recommended in the abovementioned letter of the Minister of Labour and Social Welfare; (2) the refusal of the management committee to comply with hierarchical instructions by organizing union elections in contempt of the law has produced a split in the trade union set-up in the enterprise, with one democratically elected union and another established in violation of the relevant legal provisions”. The Labour Inspectorate adds: “in view of this dichotomy in the union set-up, which is having a detrimental impact in terms of mobilization of revenue for the State, I request you to take

immediate steps to cancel the election process under way and to contact the General Labour Inspectorate with a view to adopting a modified election schedule with the outgoing union delegation ...”.

- **Memo of 12 October 2005 from the General Labour Inspectorate** concerning settlement of the collective dispute between the outgoing union delegation and the employer, OFIDA, sent to the OFIDA Chief Executive. In this memo the General Labour Inspectorate notes the positions of the parties concerned and makes the following observations and recommendations: “(1) the complaint from the trade union delegation is receivable and well founded in fact and in law; (2) the existence and the recognition of the outgoing trade union delegation are not in question; (3) with regard to the payment of remuneration, allowances and various benefits to the employees and managers who were dismissed or suspended following the strike, these penalties have obviously been cancelled by the Minister of Labour’s letter No. 12/CAB.MIN/TPS/MT/MK/183/05 of 7 April 2005, and reiterated by letter No. 12/MTPS/IGT/0424/2005 of 14 June 2005; and (4) needless to say, measures of reprisal or harassment are contrary to freedom of association and violate the provisions of ILO Convention No. 87, ratified by our country, and section 257 of the Congolese Labour Code, in particular the penultimate paragraph thereof; ...”.
- **Information note of 15 November 2005 from the OFIDA Chief Executive** to the Minister of Labour and Social Welfare concerning the situation of the former trade union delegation at OFIDA. In the note the Chief Executive recalls that many members of the former union delegation are now part of the new delegation. He points out that, out of the 18 unions represented, ten won at least one seat in the new delegation. However, none of the eight unions that failed to win enough votes disputed the election results. He says that the leaders of the outgoing union delegation proved to be confrontational and incapable of maintaining harmonious labour relations at OFIDA. During its eight years in office it launched 23 strikes, an average of three strikes per year. He affirms that the demands of the outgoing trade union delegation could only be resolved at government level. Lastly, he recalls that OFIDA is an enterprise on which the high authorities of the country rely for the maximization of state revenue and that the new management committee is focusing on that task and “will not allow itself to be distracted by troublemakers”.

2. Dismissal of Mr Lubamba Kabeya

11. Apart from the dispute over trade union elections, there is the issue of the dismissal of Mr Lubamba Kabeya. The DGDA told the mission that Mr Lubamba Kabeya was dismissed because of his refusal to take up his post as inspector in the Kin-Est provincial office. After several months’ absence without good reason, Mr Lubamba Kabeya was dismissed by the OFIDA board members for dereliction of duty on 18 July 2006. The DGDA supplied the following documents in support of its statements:
 - **Letters of 12 and 20 December 2005 from the OFIDA personnel division** formally summoning Mr Lubamba Kabeya to resume work immediately in his new posting.
 - **Report of 10 July 2006 from the OFIDA Kin-Est provincial office** recording Mr Lubamba Kabeya’s lengthy absence from work without justification since 12 October 2005.
 - **Certificate of dismissal without prior notice of Mr Lubamba Kabeya by the OFIDA board members on 18 July 2006.**
12. The complainant organization and Mr Lubamba Kabeya, for their part, claim that the latter has been the victim of reprisals because of his trade union activities and the dispute concerning the elections. Mr Lubamba Kabeya was the subject of reprisals, in particular the freeze on his salary and bonuses, even before his illegal dismissal in July 2006. The complainant claims that, despite the Labour Inspectorate’s refusal to approve the dismissal,

OFIDA continued its acts of discrimination against Mr Lubamba Kabeya. The Labour Inspectorate order of August 2006 calling for the dismissal to be overturned was ignored. The complainant denounces the fact that an institution can unilaterally refuse to implement the decisions of a public authority for years with total impunity. The mission received copies of the following documents from the complainant:

- **Letter of 29 November 2005 (No. 22/MTPS/IGT/MK/0799/2005) from the General Labour Inspectorate** to the OFIDA Chief Executive further to the latter's request for confirmation of dereliction of duty on the part of Mr Lubamba Kabeya (OFIDA letter No. DG/ADG/ADGA/1423/2005 of 15 November 2005). In its reply the General Labour Inspectorate recalls that, at the time of its reply, the collective dispute between the employee and other trade union officials concerned, on the one hand, and the OFIDA management committee, on the other hand, was still subject to conciliation within the Labour Inspectorate, in accordance with the provisions of section 308 of the Labour Code. The Labour Inspectorate makes the following comment:
 - “How can OFIDA possibly find an employee guilty of dereliction of duty when the latter is summoned to appear almost every two weeks and is waiting for his employer to settle this dispute so that he can get on with his work quietly?”
 - “The actual procedure used to dismiss this trade union delegate is marred with irregularities, particularly the flagrant violation of section 13 of the collective agreement, which states that any dismissal of a titular or alternate trade union delegate envisaged by the employer or his representatives or any transfer that involves the loss of status of union delegate shall be subject to examination by a committee composed of the employer or his representatives and the trade union delegation assisted by a representative of his union. The conclusions of this committee shall be submitted within eight days to the labour inspector who in geographical terms has competence to take the decision, in accordance with section 257 of the Labour Code.”
 - “In the light of the above, there are no grounds for meeting your request to authorize the termination of the contract of Mr Lubamba Kabeya ...”
- **Letter of 25 July 2006 (No. 22/MTPD/IPT/BT/MK/217/2006) from the General Labour Inspectorate to the advocate-general at the Public Prosecutor's Office**, recalling the position of the inspectorate concerning the dispute between the union delegation and the employer, OFIDA. In this note the General Labour Inspectorate maintains the conclusions and recommendations that it formulated in its letters of 12 October and 29 November 2005 to OFIDA (see above). Furthermore, the Labour Inspectorate makes the following comment: “Responsibility lies with the former OFIDA management committee for its refusal to comply with the directives of the Minister of Labour and Social Welfare regarding the organization of trade union elections; responsibility lies with the new OFIDA management committee, having inherited the file on the matter, for making no attempt to settle it whereas the Labour Inspectorate held many consultation meetings in an attempt to reconcile the parties; lastly, the freeze on pay (salary, accommodation fees, bonuses and other entitlements) for Mr Lubamba Kabeya constitutes an abuse of power by OFIDA.”
- **Letter of 11 August 2006 (No. 22/MTPS/IGT/BT/MN/44/2006) from the General Labour Inspectorate** to the OFIDA Chief Executive concerning the decision to dismiss Mr Lubamba Kabeya without notice for dereliction of duty. The Labour Inspectorate recalls its letter of 29 November 2005 (see above) and the provisions of the Labour Code that apply to the dismissal of a trade union delegate and refers to the OFIDA collective agreement, which guarantees to every employee the right to present his/her defence before an ad hoc disciplinary board. The Labour Inspectorate notes that the procedure for the dismissal of Mr Lubamba Kabeya constitutes a flagrant

violation of the law and the collective agreement and calls for the dismissal decision to be overturned on grounds of flaws in form and procedure.

3. Decision of 18 June 2010 of the General Labour Inspectorate and follow-up

13. It is the mission's understanding that, despite the instructions from the General Labour Inspectorate, the situation remained unchanged until 2010. In the meantime, the complainant brought the matter before the Committee on Freedom of Association in April 2009. Moreover, further trade union elections – which were also disputed – took place in March 2009 at OFIDA, which would become the DGDA by virtue of Decree No. 09/43 of 3 December 2009.
14. Further to the letter of 26 May 2010 (No. 2829/D.23/10501/MOP/2010) from the Public Prosecutor noting the irregularity of the elections held at OFIDA in 2005 and instructing the Chief Labour Inspector to act in accordance with the spirit of his letter of 14 June 2005 by reinstating trade union delegate Mr Lubamba Kabeya and all his team in their posts, the General Labour Inspectorate adopted Decision No. 22/METPS/IGT-JLL/JMK/003/2010 of 18 June 2010 and established Service Order No. 22/METPS/IGT/021/010 to implement the decision. The complainant condemns the DGDA's repeated refusal, particularly by means of the letter of 15 July 2010 (No. DGDA/DG/DRH/1510), to implement the decisions of the Chief Labour Inspector. In its decision of 18 June 2010, the General Labour Inspectorate, considering that the DGDA management had failed more than once to comply with the instructions of the competent authorities and had thus overstepped its authority, invalidated the elections held in April 2005 and March 2009; asked the DGDA management to draw up a new schedule for elections with the outgoing delegation in 2005; and demanded the lifting of all measures suspending contracts and stopping salaries for the trade union delegates, in particular the President of the trade union delegation (Mr Lubamba Kabeya), and called for their immediate reinstatement.
15. In a reply to the General Labour Inspectorate dated 15 July 2010, the DGDA Director-General disputes the General Labour Inspectorate's analysis on a number of points and concludes that the decision is clearly illegal and, according to the provisions of the Constitution, nobody is obliged to implement a clearly illegal order. The General Labour Inspectorate acknowledged receipt of this on 19 July 2010 and reiterated its recommendations, while calling for a meeting with the other party to the dispute in order to clarify matters. The mission observes that the Minister of Justice and Human Rights, to whom the case was referred, asked the Prosecutor-General in a letter dated 18 November 2010 to give his backing to the service order established by the General Labour Inspectorate, with a view to the reinstatement of Mr Lubamba Kabeya. The request was repeated in a letter dated 18 June 2011. The Minister of Justice and Human Rights contacted the Prime Minister on the matter in a letter dated 22 November 2011. The mission notes that, further to a request for clarification from the Office of the President of the Republic, the Ministry of Finance supported the position of the DGDA in the matter stating, in a letter dated 5 March 2012, that the dismissal of Mr Lubamba Kabeya was in order since "no administrative or judicial decision had challenged it", despite the instructions conveyed by the Labour Inspectorate to OFIDA (see above).
16. These documents have already been brought to the attention of the Committee on Freedom of Association, which has formulated interim conclusions and recommendations in the present case.
17. The mission observes that, as part of the follow-up by the ministerial departments, the case was referred to the permanent secretary of the standing social dialogue framework, and the latter wished to hold talks with the General Labour Inspectorate in January 2011.
18. Moreover, the mission was informed on the spot of a procedure opposing the General Labour Inspectorate decision of 18 June 2010. In response to a request from the DGDA

dated 13 December 2010, the Ministry of Justice and Human Rights reportedly agreed to give power of attorney to barristers belonging to the bar associations of Kinshasa/Gombe and Matete, to take legal action to have the General Labour Inspectorate decision overturned. The mission received a copy of the certificate acknowledging receipt of an appeal dated 12 January 2011 to the Supreme Court from the Minister of Justice, represented by national bar association President Mr Mbuy-Mbiye Tanayi, against General Labour Inspectorate Decision No. 22/METPS/IGT-JLL/JMK/003/2010 of 18 June 2010. No authority was able to inform the mission whether the appeal to the Supreme Court was validated and, if so, to indicate its outcome. The mission received copies of the following documents:

- **Letter of 13 December 2010 from the DGDA Director-General** to the Minister of Justice and Human Rights. In this letter the DGDA states that it considers the decision (of the General Labour Inspectorate) clearly illegal and asks the Minister “to give our advisers special power of attorney to have it [the decision] overturned by the Kinshasa/Gombe Appeal Court”.
- **Power of attorney signed by the Minister of Justice and Human Rights dated 14 December 2010.**
- **Letter from the DGDA Director-General to the law firms Mbuy-Mbiye, Kalenga and Thambwe Mwamba & Associates**, forwarding the power of attorney from the Minister of Justice and requesting them to take action to have the General Labour Inspectorate decision of 18 June 2010 overturned.
- **Letter of 24 March 2012 from the Minister of Justice** to national bar association president Mr Mbuy-Mbiye Tanayi, indicating that the Ministry was not aware of having issued a special power of attorney to file a court appeal with a view to overturning the General Labour Inspectorate decision and asking him to produce the document concerned.

CASE NO. 3004

INTERIM REPORT

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

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

535. The complaint is contained in a communication dated 16 November 2012 from the Union of Trade Unions of Chad (UST). The complainant organization provided additional information in a communication of 29 December 2012.

536. The Government sent its observations in a communication dated 18 March 2013.

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

A. The complainant's allegations

538. In a communication dated 16 November 2012, the UST reports that, in 2011, the Government decided to increase the guaranteed inter-occupational minimum wage from 25,000 to 60,000 CFA francs (€38 to €90). On the insistence of the UST, the Government agreed to apply this new minimum wage to both the private and the public sectors. By ministerial orders, joint committees were set up to review the pay scales of both sectors. According to the complainant organization, while the application of a new pay scale did not pose any particular problem in the private sector, other than a short-lived strike, its implementation in the public sector encountered several difficulties.
539. The complainant organization states that the revised public sector pay scale included the following three elements: step increments, category indices and an index point value to be used as the basis for calculating gross pay. The pay scale developed by the mixed joint committee was then submitted to the Public Service Advisory Committee, which endorsed it. However, prior to its approval by decree, the Government requested that it be applied over a three-year period on the grounds that the State did not have the resources to cover the wage bill that its immediate and full application would incur. According to the UST, in order not to appear totally uncompromising in the context of a strike that was already being carried out to demand the application of the pay scale, it agreed to make a concession and accepted the Government's proposal. A memorandum of understanding was concluded to that effect.
540. The complainant organization states that the application of the pay scale proved to be unfavourable to workers. The new indices were not used in the processing of employees' salaries, which led to a stagnation of wage levels, instead of an increase. A significant number of employees have actually seen a reduction in their wages, as compared to the amount they received before the pay scale review. When questioned, the Government explained that the unfavourable situation had arisen as a result of a simple error in the setting of the parameters used for calculating wages. However, this error was not corrected for many months: although the Government was made aware of the situation in February 2012, it had still not taken corrective measures in May.
541. In the light of this situation, the UST issued a one-month strike notice, for the period from 13 May to 13 June 2012. The organization called for the application of the index point value that had been agreed upon in the memorandum of understanding signed with the Government, the regularization of the wages that had decreased and the adoption of a revised agreement for contractual employees in the public service. The complainant organization states that, upon its expiry, the notice period was extended by one month, that is from 13 June to 13 July 2012. These two months passed without any contact being established with the Government.
542. The strike began on 17 July 2012, four days after the expiry of the notice period. It lasted for two months, during which time the semblance of a negotiation was initiated by the Government, tainted by anti-union acts and threats. In the light of the Government's refusal to respond to the demands on the grounds that the State did not have the necessary resources, the UST, at a general meeting held on 1 September 2012, approved a petition which denounces the poor governance in the management of the country's financial resources. The organization thereby criticized the hoarding of the country's wealth by the Head of State, his family and the people close to him. The Government seized this opportunity to claim that the UST had set aside its social aspirations to venture into

political territory. According to the authorities, the union was not in a position to make such claims against the Head of State and the people close to him.

543. According to the complainant organization, the situation became explosive. It is in this context that the General Secretary of the UST, Mr François Djondang, was harassed by the authorities for three days. Religious leaders, namely the Archbishop of N'Djamena, the General Secretary of the Alliance of Evangelical Churches and Missions of Chad and the President of the Higher Council for Islamic Affairs intervened, offering to mediate in order to help calm the situation down. So as not to engage in discussions under the pressure of a strike, the UST agreed to suspend its strike for one month, from 17 September to 17 October 2012.
544. However, on 10 September 2012, the three highest-ranking officials of the UST, namely Mr Michel Barka, its President, Mr Younous Mahadjir, its Vice-President, and Mr François Djondang, its General Secretary, narrowly escaped a kidnapping attempt. This incident was reported to the police at the request of the Attorney-General of the Republic, as a result of pressure from the victims' lawyers. However, the complainant organization states that, when they went to the prosecution services accompanied by dozens of activists, after the hearing, the Attorney-General charged them for defamation and incitement to racial hatred.
545. Therefore, one day after the suspension of the strike, on 18 September 2012, the General Secretary, the President and the Vice-President of the UST were each given a suspended sentence of 18 months' imprisonment and fined 1 million CFA francs (equivalent to €1,550) for defamation and incitement to racial hatred, following a sham trial that did not even last half an hour.
546. Furthermore, the UST alleges that, during the sentencing, a union activist, Mr Gustave MBailou Betar, smiled at the severity of the sentence and was convicted from the bench for contempt of court. He was sentenced to three months in prison and fined 300,000 CFA francs. He served his prison sentence under conditions that led to his death on 9 December 2012 at the General Hospital of National Reference.
547. The complainant organization also alleges reprisals by the authorities against union officials who led the strike in the health sector, including the arbitrary administrative transfers of several UST officials (Mr Younouss Mahadjir, Mr François Djondang, Mr Montanan N'Dinaromtan, Ms Rachel N'Doukolngone Naty, Ms Djerane Laoumaye and Mr Richard Abdoulaye) in several of the country's towns.
548. The complainant organization states that, despite these sanctions and notwithstanding the insistence of its members to resume the strike in response to the actions of the authorities, it demonstrated its good faith by respecting the suspension period up until its expiry, from 19 December 2012 to 31 March 2013. Nevertheless, the Government rejected the offer of religious mediation and, as a result, throughout the suspension of the strike by the UST, no contact was established between the parties. This attitude of contempt and irresponsibility on the part of the Government led the workers to resume the strike.
549. The UST has set certain prerequisites for the resumption of dialogue with the Government and the lifting of the strike: (1) the reversal of the conviction of the three highest-ranking officials of the trade union confederation; (2) the cancellation of the arbitrary sanctions against union officials in the health sector for taking strike action; and (3) the adoption and approval of standardized agreements for contractual and decision-making employees in the public service.

550. The complainant organization reports that the Government, for lack of a better argument, referred to Act No. 008/PR/2007 regulating the exercise of the right to strike in public services to threaten to declare the strikes illegal, even though the act recognizes the legitimacy of the workers' action. The UST recalls that the act, which the Government wants to use in order to restrict union activity, was subject to the criticism of the Committee on Freedom of Association in a previous case (Case No. 2581), but it has not yet been amended as requested.
551. Noting that the Government's blatantly anti-union attitude is in violation of the Conventions ratified by Chad, the complainant organization urges it to end its acts of harassment against trade unionists and its obstruction of trade union activities. It hopes that the Committee on Freedom of Association will issue some recommendations in this regard.

B. The Government's reply

552. In a communication dated 18 March 2013, the Government states its commitment to collective bargaining and social dialogue, an essential tool to meet social challenges. It is in this spirit that the Government wished to be part of the ILO's project to support the implementation of the Declaration (PAMODEC), which it sees as an opportunity to strengthen the capacity of the administration and the social partners in this regard.
553. The Government states that it decided to increase the guaranteed inter-occupational minimum wage from 25,480 to 60,000 CFA francs in both the public and the private sectors, without having been placed under any pressure to do so. It therefore established, by order of the Minister of Public Service and Labour, two committees (one joint and the other mixed and joint), to review the pay scales of the private and public sectors. The role of the mixed joint committee is to make proposals to the Government and the social partners. It is up to them to accept or not the proposals. It is in this context that the memorandum of understanding referred to by the complainant organization was signed. In addition, the Government wishes to clarify that the Public Service Advisory Committee, which issues an opinion only on matters that are referred to it, adopted the pay scale but was unable to reach a consensus on the issue of the increase of the index point value proposed by the mixed joint committee. Therefore, the Government has not taken any action to endorse the new index point value proposed by the mixed joint committee and requested by the organizations representing staff, which form part of the Public Service Advisory Committee. The three components of the pay scale review mentioned by the complainant organization remain valid, but the index point value should be the one that is currently in force (115), as established by the memorandum of understanding between the Government and the trade union organizations of 20 June 2007 and approved by Act No. 013/PR/2007 of 3 October 2007, amending Act No. 001/PR/2007 of 5 January 2007, on the general state budget for 2007.
554. The Government points out that, while it was examining with the employers the errors in the pay scales and the repercussions of applying these errors, the UST and the Free Confederation of Workers of Chad (CLTT) called on their members to stage a three-day strike, which could possibly be extended. This led the Government to engage in negotiations with the two trade union confederations, which resulted in the signing of a memorandum of understanding on 11 November 2011 on a new pay scale established by Decree No. 1249 of 12 November 2011. According to the Government, the memorandum of understanding is clear and unambiguous, in that the index point value remains unchanged.
555. The annual financial impact of the pay scale was valued at 12.5 billion CFA francs. Considering the State's capacity to absorb this impact in 2012, it was agreed that the pay scale would be applied gradually, starting at 20 per cent in 2012, 40 per cent in 2013 and

40 per cent in 2014. An intermediate pay scale, taking into account the 20 per cent, and a table calculating pay-outs under that pay scale were developed for 2012. The Government states that it did everything it could to ensure the implementation of the memorandum of understanding; however, the UST argued that the pay indices should have been multiplied by 150 instead of by 115. Furthermore, the UST has criticized the fact that the salaries of certain State employees have stagnated and have even been cut in some cases.

556. The Government acknowledges that the pay cuts in question were caused by a computer hitch. However, the errors were corrected immediately. It regrets that, despite numerous meetings with the social partners, at which it had tried to explain that the technical problems had been corrected automatically and that, when the memorandum of understanding had been signed in November 2011, there had been no question of increasing the index point value, the UST toughened its position. The UST initiated a strike on 17 July 2012 without taking into account the opinion of the CLTT, which is a signatory to the same memorandum of understanding.
557. According to the Government, the Union of Social Affairs and Health Workers (SYNTASST) also participated in the strike called by the UST, despite having signed a memorandum of understanding with the authorities and having agreed to a three-year social truce, which expired in 2014. The Government regrets that the UST went from staging a go-slow strike to an all-out strike that even applied to essential services, thereby endangering the life and safety of the entire population. According to the Government, the UST, by preventing requisitioned state employees from working in certain essential services, is responsible for the death of several people. The strike is also in violation of Act No. 008/PR/2007 of 9 May 2007 regulating the exercise of the right to strike in public services.
558. The UST then ventured into the political arena by attacking the Head of State and his family in a petition that was made public. The judiciary was seized of the matter and brought charges against those responsible for the petition.
559. Furthermore, the Government denies that it refused mediation by religious leaders and by the Network of Human Rights Associations and states that it has always wanted to promote dialogue through the National Social Dialogue Committee (CNDS), a tripartite body established by Decree No. 1437/PR/PM/MFPT/09 of 5 November 2009 and responsible, inter alia, for facilitating the settlement of social conflicts. Thus, 18 January 2013 saw the official opening of negotiations in the premises of the CNDS with a view to reaching a social pact.
560. The Government considers that not only was the memorandum of understanding of 11 November 2011 terminated unilaterally; the memorandum of understanding between the Government and SYNTASST was too. This situation could have escalated and public order could have been jeopardized. In this case, the Government could have taken the measures necessary to ensure the maintenance of order.
561. However, the Government states that it had been convinced that the crisis could be resolved only through dialogue and had been able to demonstrate, once again, its good faith by reviewing all the measures that were considered by the UST to be a prerequisite for negotiation, in order to defuse the atmosphere. These measures included: (1) the outright cancellation of the assignments of the union officials; (2) the non-withholding of the salaries of employees who went on strike; (3) the continuation of the financial impact of the memorandums of understanding unilaterally terminated by the unions; and (4) the adoption of standardized agreements for employees in the public service. On this last point, a draft collective agreement for contractual employees in the public sector was prepared,

adopted and discussed by the Cabinet Council. The draft should be adopted by the Government in the near future.

562. Regarding the demand by the UST to reverse the conviction of the trade union officials, the Government states that it is for the judicial authorities to decide, in view of the independence of the judiciary.
563. The Government affirms its desire to uphold social peace and its commitment to achieving a successful outcome in this case.

C. The Committee's conclusions

564. *The Committee observes that this case concerns allegations of harassment and discrimination against members of the Union of Trade Unions of Chad (UST), in particular the transfer, arrest and conviction of its officials for taking strike action.*
565. *The Committee notes that the difficulties that are alleged in the present case have resulted from the application of an increase in the guaranteed inter-occupational minimum wage in the public sector and, in particular, from a disagreement between the Government and the complainant organization over the methods of applying this increase, following the signature of a memorandum of understanding in November 2011. The Committee also observes that some technical hitches in the computer system also hampered the application at first, but that, according to the Government, the problems were quickly resolved. Nevertheless, the complainant organization alleges that the new pay scale has had a negative impact on the pay of some State employees. According to the UST, all these difficulties and the absence of corrective measures by the authorities led it to file a strike notice in May 2012, for a period that the trade union confederation extended twice in order to allow for possible negotiations. However, in the view of the lack of contact with the Government, the strike was initiated on 17 July 2012 in the public services, and lasted for two months.*
566. *The Committee notes that, according to the Government, the Union of Social Affairs and Health Workers (SYNTASST) also participated in the strike called by the UST, despite having signed a memorandum of understanding with the authorities and having agreed to a three-year social truce, which expired in 2014. The Government considers that the staging of the strike represented a unilateral termination not only of the memorandum of understanding of 11 November 2011, but also of the memorandum of understanding between the Government and SYNTASST. In this regard, according to the Government, the situation could have escalated and public order could have been jeopardized. The Government alleges, in particular, that the strike affected essential services, thereby endangering the life and safety of the population. According to the Government, the UST, by preventing requisitioned state employees from working in certain essential services, is responsible for the death of several people. The strike is also in violation of Act No. 008/PR/2007 of 9 May 2007 regulating the exercise of the right to strike in public services.*
567. *The Committee notes that, according to the complainant organization, the persistent refusal by the Government to respond to its demands under the pretext that the State did not have the necessary financial resources led it to adopt, in September 2012, a petition which denounces the poor governance in the management of the country's financial resources. The intention of the complainant organization was to criticize the hoarding of the country's wealth by the Head of State and the people close to him. The Committee observes that the Government considers this petition to be a political attack against the Head of State and his family.*

568. The Committee notes that, according to the complainant organization, the situation then became strained. In order to relieve the pressure, the UST agreed to a period of truce and to suspend the strike action. However, its officials were subjected to ongoing harassment until they were convicted, on 18 September 2012, for defamation and incitement to racial hatred, by the Attorney-General of the Republic, even though they had gone to the prosecution services to report an attempted kidnapping. The General Secretary, the President and the Vice-President of the UST were each given a suspended sentence of 18 months' imprisonment and fined 1,000,000 CFA francs (equivalent to €1,550) for defamation and incitement to racial hatred, after a half-hour trial. Furthermore, the complainant organization alleges that, during the sentencing, a union activist, Mr Gustave MBaïlou Betar, was convicted for contempt of court and was sentenced to three months in prison and fined 300,000 CFA francs. He served his prison sentence under conditions that led to his death on 9 December 2012 at the General Hospital of National Reference. The Committee notes that the complainant organization is requesting the reversal of the rulings that were handed down.
569. The Committee notes the Government's statement that, following the publication of the petition, the judiciary was seized of the matter and brought charges against those considered to be responsible for it. Concerning the request by the UST to reverse the convictions of its officials, the Government states that it is for the judicial authorities to decide, in view of the independence of the judiciary.
570. Noting the contents of the petition in question, the Committee wishes simply to recall the following principles in relation to the freedom of expression of trade unions and employers' organizations: the right to express opinions through the press or otherwise is an essential aspect of trade union rights. 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 (revised) edition, 2006, paras 155 and 157]. The Committee trusts that the Government will ensure respect for these principles. Furthermore, it requests the Government to keep it informed of any appeals against the convictions of the UST officials and to indicate to it any final decision that is handed down in this regard.
571. The Committee notes that, according to the complainant organization, despite its decision to observe the suspension until its expiry (31 March 2013), no contact was established between the parties throughout the suspension of the strike by the UST. This conduct by the Government led the workers to resume the strike. However, the Government allegedly threatened to apply Act No. 008/PR/2007 regulating the exercise of the right to strike in public services in order to declare the strikes illegal. The Committee notes that, in a press briefing, the Government stated that the UST's strike was groundless, that it had decided to cancel the memorandum of understanding of 3 June 2011 with SYNTASST and the memorandum of understanding of 11 November 2011 with the UST and the CLTT, and that it reserved the right to apply the legislation in force to the requisitioned workers who would not return to work.
572. The UST recalls that the legislation in question has been subject to the criticism of the Committee on Freedom of Association in a previous case (Case No. 2581) but has still not been amended as requested. On that occasion, the Committee had recalled the principles of freedom of association relating to the exercise of the right to strike in public services and the determination of a minimum service. It had requested the Government to take the necessary steps to review its legislation [see 354th Report, paras 1112–1115]. The Committee notes with regret that this matter continues to be the subject of follow-up by the Committee of Experts on the Application of Conventions and Recommendations, without there having been any reported progress (see 2013 comments on the application of

Convention No. 87 by Chad). The Committee is bound to reiterate its previous recommendation, namely that it requests the Government to take the necessary steps to review, in consultation with the social partners concerned, its legislation relating to the exercise of the right to strike in public services (Act No. 008/PR/2007 of 9 May 2007) to ensure the determination of a minimum service in accordance with the principles of freedom of association. Noting that the Government has adopted an order (No. 624/PR/PM/2013) concerning the establishment of a tripartite Ad Hoc Negotiation Committee (CAN), to find ways, in accordance with section 1 of the order, to ensure the regular functioning of public and private services, the Committee urges the Government to keep it informed of the work of the CAN in this regard.

573. Lastly, the Committee notes that the complainant organization alleges that reprisals were taken against the union officials who led the strike in the health sector, including the arbitrary administrative transfers of several UST officials (Mr Younouss Mahadjir, Mr François Djondang, Mr Montanan N'Dinaromtan, Ms Rachel Naty N'Doukolngone, Ms Djerane Laoumaye and Mr Richard Abdoulaye) in several of the country's towns. In this regard, the Committee notes with interest the Government's statement to the effect that, in order to demonstrate its good faith, it decided to review the demands that were considered by the UST to be a prerequisite for negotiation, including the outright cancellation of the re-assignments of the union officials and the non-withholding of the salaries of employees who went on strike. While welcoming this decision by the Government to calm the situation, the Committee nevertheless wishes to recall the principle that no one should be penalized for carrying out or attempting to carry out a legitimate strike [see *Digest*, op. cit., para. 660].

The Committee's recommendations

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

- (a) The Committee requests the Government to ensure the respect of the principles that it recalls in relation to the freedom of expression of employers' and workers' organizations, and to keep it informed of any appeals initiated against the convictions handed down in September 2012 against the officials of the Union of Trade Unions of Chad and to indicate any final decision rendered in this regard.*
- (b) The Committee notes with regret that, since its last recommendation on the need to amend Act No. 008/PR/2007 regulating the exercise of the right to strike in public services, there has been no reported progress. It is bound to, once again, request the Government to take the necessary steps to review, in consultation with the social partners concerned, its legislation relating to the exercise of the right to strike in public services (Act No. 008/PR/2007 of 9 May 2007) to ensure the determination of a minimum service in accordance with the principles of freedom of association. The Committee urges the Government to keep it informed of the work of the Ad Hoc Negotiation Committee (CAN) in this regard.*

CASE NO. 3022

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

Complaint against the Government of Thailand presented by

- **the State Railway Workers' Union of Thailand (SRUT)**
- **the State Enterprises Workers' Relations Confederation (SERC)**
- **the International Transport Workers' Federation (ITF) and**
- **the International Trade Union Confederation (ITUC)**

Allegations: The complainant organizations allege anti-union dismissals against six State Railway Workers' Union of Thailand (SRUT) Hat Yai branch committee members and seven SRUT leaders for their part in the occupational health and safety initiative launched after the Hua Hin rail disaster and the imposition of penalties for conducting an industrial action. They add that the conduct of the State Railway of Thailand (SRT) and other official institutions exposes a number of failures in Thai law to protect the rights of workers and trade unions, which is not consistent with the principles of freedom of association as set out in Conventions Nos 87 and 98

575. The complaint is contained in a communication from the State Railway Workers' Union of Thailand (SRUT), the State Enterprises Workers' Relations Confederation (SERC), the International Transport Workers' Federation (ITF), and the International Trade Union Confederation (ITUC), dated 30 April 2013.
576. The Government forwarded its response to the allegations in a communication dated 11 March 2014.
577. Thailand has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

578. In a communication dated 30 April 2013, the complainant organizations the SRUT, the SERC, the ITF and ITUC allege the failure of the Government to adequately respect the rights of trade unions, their leaders and members in accordance with the principles of freedom of association, as set forth in ILO Conventions Nos 87 and 98. They assert that the conduct of the State Railway of Thailand (SRT) and other official institutions in the dispute that prompted this complaint exposes a number of failures in Thai law to protect the rights of workers and trade unions, for which the Government is responsible as a member State of the ILO. While Thailand has not ratified Conventions Nos 87 and 98, it is within the mandate of the Committee to determine whether any given legislation or

practice complies with the principles of freedom of association, irrespective of whether the country concerned has ratified these Conventions.

- 579.** On that basis, the complainants believe that the conduct of the SRT raises serious questions of compliance with respect to measures designed to: (i) protect trade unions so that they are able to freely organize their activities and formulate their programmes without restrictions or impediments on the lawful exercise of these rights; (ii) protect trade unions in their efforts to further, and defend, the interests of workers; and (iii) protect workers from acts of anti-union discrimination.
- 580.** The complainants describe the SRT as Thailand's state-owned surface rail operator, which was founded in 1896 and is operating all of Thailand's national rail lines (4,070 km of track). Before 1998, it employed more than 20,000 workers, whereas as of 2012, it employs only 11,000 regular and 4,000 temporary workers. The downsizing of the railway workforce was the result of the July 1998 Cabinet Resolution which stipulated that the SRT shall not employ more than 5 per cent of those reaching the mandatory retirement age in each year.
- 581.** The complainants report that before 2009, the Government paid scant regard to the national railways, with little or no infrastructure or technical investment being made. For example, one of the SRUT's main health and safety concerns was the use of outdated manual signalling systems. As of 2009, the existing stock was more than 25–30 years old, with the last locomotive being purchased in 1995, and only 20 of 170 locomotives being equipped with dead man's switches and vigilance control equipment.
- 582.** With respect to the SRUT, the complainants state that the history of the railway workers' movement in Thailand goes back to 1957 when the first trade union was formed and dissolved one year later. After many years of lack of freedom of association and assembly in Thailand, an international outcry over government repression, involving the imprisonment and killing of trade union leaders in 1970, led to the introduction of a limited set of labour rights and the emergence of the railway workers' associations, which have been at the forefront of the democracy movement ever since and were successfully merged into one National State Railway Association in 1991. This organization was transformed into the SRUT after the adoption in 2000 of a new labour law allowing the establishment of trade unions in the public sector. Today, the SRUT represents 11,000 members in all categories and regions of the Thai national railways. These rail workers are covered by a collective bargaining agreement between the SRUT and the SRT (first signed in 1975 between the railway workers associations and the SRT). The SRUT has been involved in all the relevant committees and represented workers in many decision bodies of the SRT, including its bipartite labour relations committee (Relations Affairs Committee (RAC)). Nationally, the union is affiliated to the SERC where it has played a leadership role. Founded in 1980, the SERC brings together 45 public sector unions (70 per cent of organized labour in the public sector) and joined ITUC in 2008. Internationally, the SRUT has been an affiliate of the ITF since 1989.
- 583.** The complainants indicate that, on 5 October 2009, the SRT Train No. 84 derailed at Khao Tao station in the Hua Hin district of Prachuap Kiri Khan Province, Thailand, killing seven people, following similar derailments earlier that month in the western Kanchanaburi Province (passenger train) and northern Bangkok (freight train). The official accident investigation report states that the train driver fell asleep, or became unconscious, immediately prior to the derailment; the cause of the fatal accident was therefore put down to driver negligence. According to the complainants, the report also contains statements of the train driver and engineer that the locomotive's dead man's switch and vigilance control equipment were broken and that the smoke which continuously drifted into the control room made the train driver unconscious.

- 584.** The complainants state that, on 13 October 2009, the SRUT called a meeting of its executive committee and subcommittees, from all of its nine provincial branches, to discuss the deteriorating occupational health and safety situation on SRT trains. Aware that the SRUT was prohibited from taking strike action under Thai law, it was agreed by the SRUT leadership that the best strategy would be to call on the SRT to abide by its occupational health and safety obligations under the collective bargaining agreements (CBAs) signed between the SRUT and the SRT (hereafter the Occupational Health and Safety Initiative).
- 585.** The complainants cite the relevant provisions in the CBAs as follows: “The SRT shall fix equipment that plays a key role in providing for the safety of locomotives and their attached carriages and shall ensure that all locomotives and carriages are in perfect working condition before bringing them out for operation” (2001 CBA). “The SRT shall check and fix all equipment on all of its locomotives, carriages and bogies to ensure that they are in perfect working condition before bringing them out for operation” (2002 CBA). The latest CBA between the SRUT and the SRT confirmed that the above provisions continued to be in force.
- 586.** The complainants indicate that, on 14 and 15 October 2009, the SRUT issued press releases calling for the commencement of the Occupational Health and Safety Initiative and maintaining in the strongest terms that any faulty locomotive which failed to be in sufficient repair should not proceed into service as per the CBAs. In response to the SRUT’s plea, approximately 1,200 SRUT members (600 “sets” composed of a driver and a technician) refused to drive trains that had faulty dead man switches or vigilance control equipment.
- 587.** According to the complainants, the SRT responded to the press releases by issuing an order setting out procedures to be followed should workers determine that locomotives were not in working order and providing that notices should be placed on two sides of the driver’s carriage, warning them to drive with additional caution should the dead man’s switch and/or vigilance control equipment not be working properly. On 16 October 2009, the SRUT condemned the SRT order in a press release arguing that the dead man’s switch and vigilance control equipment were crucial for ensuring passenger safety, vital for preventing accidents and considered to be essential in most other countries and pointing to an earlier SRT order barring workers from tampering with the said devices at the risk of heavy disciplinary sanctions. Between 22 and 26 October 2009, the police were called to the Hat Yai railway station and depot to maintain calm and order.
- 588.** The complainants add that, on 28 October 2009, an agreement setting out plans to form a committee to investigate safety conditions on SRT trains was signed between the SRUT, the SRT, high government officials and police and army representatives. Despite the SRT’s initial contention that the SRUT had prevented the proper functioning of the Thai railway system during the Occupational Health and Safety Initiative, it was conceded that the SRUT had not done so, but simply instructed its members to wait for any faulty safety equipment to be fixed before proceeding to drive the trains in question.
- 589.** The complainants allege that, nonetheless, the SRT dismissed the six following committee members of the SRUT Hat Yai branch for their involvement in the Occupational Health and Safety Initiative (dismissal orders of 27 October 2009): (i) Mr Wirun Sagaekhum, locomotive driver 6 and the President of the SRUT Hat Yai branch; (ii) Mr Prachaniwat Buasri, locomotive driver 6 and the Vice-President of the SRUT Hat Yai branch; (iii) Mr Sorawut Porthongkham, technician 5 and registration officer of the SRUT Hat Yai branch; (iv) Mr Thawatchai Bunwisut, technician 5 and labour relations officer of the SRUT Hat Yai branch; (v) Mr Saroj Rakchan, technician 5 and public relations officer of

the SRUT Hat Yai branch; and (vi) Mr Nittinai Chaiphum, station master and academic officer of the SRUT Hat Yai branch.

- 590.** The complainants further indicate that, on 15 January 2010, the national tripartite State Enterprise Labour Relations Committee (SELRC) ordered the SRT to reinstate the six workers. The SRT appealed the reinstatement order to the Thai Labour Court. On 17 December 2010, the National Human Rights Commission of Thailand (NHRC) found the SRT to have violated principles of freedom of association and workers' rights in relation to the treatment of the Hat Yai six (NHRC report enclosed with the complaint). The NHRC strongly recommended that the SRT comply with the tripartite committee's reinstatement order. On 16 March 2012, the Thai Labour Court reversed the reinstatement order holding that the SRT did not act unlawfully in dismissing the six workers, as they had incited unrest among SRT workers, caused damage to the employer and staged unlawful industrial action. The SRUT has filed an appeal with the Supreme Labour Court.
- 591.** Furthermore, the complainants allege that the SRT sought the authorization from the Central Labour Court to dismiss seven national leaders of the SRUT who were protected from summary dismissal as members of the SRT bipartite labour relations committee, claiming, among other things, that the union leaders breached the provision in the Thai labour statute banning strikes in the public sector. On 28 July 2011, the Central Labour Court granted the SRT leave to dismiss the following seven SRUT leaders for their contribution to the Occupational Health and Safety Initiative launched after the Hua Hin rail disaster: (i) Mr Sawit Kaewvarn, SRUT President; (ii) Mr Pinyo Rueanpetch, SRUT Vice-President; (iii) Mr Banjong Boonnet, SRUT Vice-President; (iv) Mr Thara Sawangtham, SRUT Vice-President; (v) Mr Liem Morkngan, SRUT Vice-President; (vi) Mr Supichet Suwanchatree, SRUT Secretary-General; and (vii) Mr Arun Deerakchat, SRUT academic officer. The Court also ordered the seven defendants to pay 15 million Thai baht (THB) (circa US\$500,000) plus 7.5 per cent annual interest accrued from the date of filing. The SRUT has filed an appeal with the Supreme Labour Court. On 10 August 2011, the SRT issued dismissal notices to the seven union leaders and their contracts were terminated on 25 September 2011.
- 592.** The complainants also state that the SRT claimed, in a separate suit, damages of THB87 million (circa \$3 million) against the SRUT. On 26 March 2012, the Central Labour Court dismissed the case stating that the seven union leaders were to blame for the industrial action as they were acting in a personal capacity and that the damages payable by the union leaders were sufficient, thereby making this suit redundant.
- 593.** The complainants report that, in 2012, Mr Kaewvarn, and other SRUT leaders, met on several occasions with the Deputy Minister of Transport who is reported to have shown support for the SRUT, but no measures were taken to reinstate the 13 dismissed union leaders. On 19 October 2011, the seven dismissed SRUT leaders appealed for reinstatement to the SRT independent board, which responded in the negative, affirming that the appeal was unjustified. Since the end of 2011, the SRUT also sought the re-establishment of the SRT bipartite labour relations committee, but the then SRT Governor showed no interest in doing so. In late 2012, a new Minister and Deputy Minister for Transport were appointed, together with a new SRT Governor. On 15 February 2013, the SRUT leadership met with the new Ministers and Governor, raised the issue of reinstatement and was told to discuss directly with the Governor. On 28 March 2013, the bipartite labour relations committee was reconvened under the tutelage of the new Governor. While general labour relations issues were discussed, no time was spent on the issue of reinstatement of the 13 dismissed union leaders.
- 594.** In terms of international mobilization in support of the SRUT Occupational Health and Safety Initiative, the complainants indicate that an ITF safety mission, composed of the

ITF railway workers' section chair, six delegates from various countries, as well as representatives from the ITF, visited Thailand from 12 to 15 January 2010, to investigate the dismissal case and study safety standards in Thai railways. Meetings were held with the SRUT, other ITF Thai affiliates, the SRT Deputy Governor, officials at the ILO Bangkok Office, the Labour Minister and the SERC national labour centre. The delegation visited SRT worksites in Bangsue, Makkasan and Hat Yai.

- 595.** According to the complainants, the ITF mission concluded that the Hat Yai dismissal case was “motivated to stop the union from taking further action where the justification of the dismissals was made-up after the SRT took such action”. The ITF mission observed that although the workers were dismissed based on a SRT report that cited that a senior staff manager had witnessed their wrongdoings to interrupt the operation of the railways, the report failed to stipulate the name of the witness or the specificities of such action. After observing the safety standards in the workplaces they visited, the delegation also felt that the Government and the management had failed to invest in the railways for many years. It was noted that the locomotives were in a general poor condition caused by lack of maintenance; and that the locomotive drivers who had been interviewed during the visit confirmed that the safety device – the “dead man’s control” – was not in order on several locomotives, albeit a very important barrier against human error and mandatory in most parts of the world in general; there are severe penalties for driving without a functional safety device. A member of the ITF safety mission stated that it was a shock to find a First World country operating locomotives without operable vigilance devices, boarded-up windows and other mechanical defects on the locomotive; that a locomotive in such a condition would not be permitted to enter operating service in his country; and that to find that workers were dismissed for expressing concern, and subsequently refusing to take the locomotives into revenue-earning service owing to their concerns for public safety, is of equal concern.
- 596.** The complainants report that, since 2009, the ITF has also asked its affiliates to support the railway workers and their union, the SRUT, in Thailand. Activities have included: delegation visits to Thailand to express solidarity with the union; meetings with Thai Embassy officials to discuss the case; submission of motion to relevant Parliament; protest outside the Thai Embassy; submission of protest letters to the Thai Embassy; and messages of solidarity to the SRUT. ITF meetings have also expressed their concern over the situation in Thailand by adopting emergency motions in solidarity with the SRUT. On 20 June 2012, an ILO–SERC seminar on the “Real situation of health and safety rights at work of Thailand labour” took place in Bangkok seeking to create awareness about the Occupational Safety and Health Convention, 1981 (No. 155), (OSH); and to initiate cooperation between the Government, employers and workers for improvement in the OSH standards at railways. Prior to, and following, the ITF Safety Mission in 2010, the ITF has written to the Thai Government and the railway company on numerous occasions. In March 2012, the ITF wrote to the newly-appointed Minister of Transport, who responded in August 2012, confirming that he had assigned the SRT to undertake a thorough consideration of the matter and to report back to the Ministry.
- 597.** According to the complainants, despite the dismissal of 13 union leaders, the SRUT Occupational Health and Safety Initiative was successful, since the Government agreed to recruit 171 graduates from the country’s Railway Technical School in November 2009, and to allocate almost THB200 billion (circa \$6.5 billion) to improve rail infrastructure (THB176 billion has so far been allocated); the Government also approved the SRT’s plan to employ 2,438 new staff on 17 April 2012, with the recruitment process currently under way.
- 598.** The complainants indicate that the Thai Constitution specifically provides for freedom of association (for all workers), although exceptions are made to protect certain national

interests: “The restriction on such liberty ... shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly.” The Constitution does not provide for the right to strike.

- 599.** The complainants add that labour relations in the Thai public sector are governed by the State Enterprise Labour Relations Act B.E. 2543 (2000) (SELRA) the preface of which explicitly affirms the Government’s intention to jointly promote sound labour policies and practices and Decent Work as defined by the ILO. Under section 51 of the SELRA, employees of state enterprises, except management-level personnel, have the right to form and join trade unions and federations and bargain collectively. Section 33 imposes a general prohibition on industrial action in the public sector. Section 77 stipulates penalties for such strike action: up to one year of imprisonment or a fine, or both, for participation in a strike; and up to two years of imprisonment or a fine, or both, for its instigation. The SELRA contains the following anti-union discrimination provisions (sections 35 and 58, respectively):

An Employer is prohibited to dismiss or commit any act which may result in an Employee’s inability to continue working because of his proceeding to establish a Labor Union, Labor Federation, or being the member of a Labor Union, Labor Federation the relations affairs committee, Committee or subcommittee of the State Enterprise Labor Relations Committee, prosecution proceedings, being witness, or rendering evidence to Competent Officers, the Registrar, the Committee, or the Labor Court against the Employer;

...

When the Labor Union acts for the benefit of its members, the Employee of the Labor Union, the committee member of the Labor Union, subcommittee member, and the staff of the Labor Union, the subcommittee member, and the staff of the Labor Union, shall be exempted from criminal or civil charges or action, upon the participation in the negotiation for the settlement on the demand on Conditions of Employment with an Employer and the explanation or the publication of the facts concerning the demand or the Labor Disputes or the operation of the Labor Union except if the activities constitute criminal offences in the nature of offences against the public safety, life and body, liberty and reputation, properties, and civil offences resulting from the criminal offences thereof.

- 600.** The complainants recall that, together with the other global union federations on behalf of their respective Thai affiliates, they had previously presented allegations of violations of trade union rights against Thailand on 14 May 1991 (Case No. 1581). That complaint concerned two laws passed by the military-appointed Thai National Legislative Assembly which were aimed at dissolving the more than 120 unions in nearly 65 state-owned enterprises by excluding them from coverage under the Labour Relations Act. Public sector workers were also to be barred from collective bargaining and the right to strike and would be subject to harsh penalties for union activities in such enterprises. The Committee concluded in 1991 that the legislation posed serious problems of compatibility with the ILO principles on freedom of association, both from the point of view of the right to form and join organizations of a public enterprise employee’s own choosing, the right to collective bargaining and the right to promote and defend workers’ interests through strike action. Following numerous recommendations made by the Committee in the framework of Case No. 1581, the Government introduced the SELRA in 2000. While noting that the SELRA permitted state enterprise employees to organize and bargain collectively, the Committee on Freedom of Association recognized in 2002 a number of serious inconsistencies with the principles of freedom of association, which concern the subject matter of the present complaint, namely the general prohibition of strikes in section 33 of the Act and the extremely severe penalties for participation or instigation of strike action, even if it is peaceful (including one to two years of imprisonment). In calling for the Thai Government to take the necessary measures to amend the SELRA to bring it fully into conformity with the principles of freedom of association, the Committee also offered it

technical assistance to do so. The case was closed in 2004. While appreciating the Government's proposal to conduct a study on Conventions Nos 87 and 98 with a view to enhancing the right to organize workers of all sectors, the Committee expressed the firm hope that all the issues it had raised would be resolved in a satisfactory manner in the shortest possible time. The complainants also highlight that the ILO Committee of Experts on the Application of Conventions and Recommendations and the ILO Conference Committee on the Application of Standards have made a number of comments on Thailand's failure to report on the application of ratified and unratified Conventions over the past 22 years.

- 601.** Therefore, in so far as the dismissal by the SRT of 13 SRUT leaders for organizing the Occupational Health and Safety Initiative is concerned, the complainants conclude that there has been a breach of the principles of freedom of association as set forth in ILO Convention No. 87. The complainants contend that the Occupational Health and Safety Initiative undertaken by the SRUT did not amount to industrial action and was therefore not unlawful. Consequently, the dismissals of the 13 union leaders could not have been supported by national law. Moreover, the complainants believe that, even if the Occupational Health and Safety Initiative did constitute prohibited industrial action under national law, it is clear that Thai law is not in conformity with the principles of freedom of association and, therefore, that the dismissed leaders should be reinstated and the law revised.
- 602.** The complainants state that, while it would appear that the Government recognizes the right to strike for private sector workers, it clearly does not hold the same view for public sector workers. However, the Committee on Freedom of Association has held that the right to strike may only be restricted or prohibited in the following cases: (i) in the public service only for public servants exercising authority in the name of the State; (ii) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population); or (iii) in the event of an acute national emergency and for a limited period of time. In the complainants' view, state railway employees do not count as public servants exercising authority in the name of the State, and railway services do not constitute essential services in the strict sense of the term. The same applies to transport services and public transport services generally. It is evident that an acute national emergency is considered to mean a genuine crisis situation, such as those arising as a result of a serious conflict, insurrection or natural, sanitation or humanitarian disaster, in which the normal conditions for the functioning of society are absent.
- 603.** The complainants consider that, while the Thai prohibition on strikes in the public sector cannot be justified by any of the reasons cited above, there is also failure to give compensatory guarantees for workers deprived of that right. The Committee has held that such protection should include, for example, impartial conciliation and eventually arbitration procedures which have the confidence of the parties. In this regard, the complainants wish to highlight the complete lack of faith of the SRUT in the Thai national tripartite SELRC and the enterprise-level bipartite labour relations committee. The SRUT stated that until the recent appointment of a new Governor, the SRT failed to recognize the replacements of the seven dismissed union leaders in the bipartite committee. This consultative mechanism was therefore completely obsolete despite being a statutory guarantee. The complainants recall that the Committee has held that Government intervention (not imposing a general prohibition) on strikes in the railway services can only be justified in certain extreme situations, for instance by establishing a minimum service.
- 604.** The complainants feel that the excessive sanctions set out in national law for workers participating in, and unions calling, industrial action, namely up to one year of imprisonment or a fine, or both, for participation in a strike; and up to two years of

imprisonment or a fine, or both for its instigation, amount to a breach of the principles of freedom of association. Moreover, they believe that the damages awarded to the SRT by the Central Labour Court in the case allowing the dismissal of seven SRUT leaders, could lead to the bankruptcy of the individuals concerned and the dissolution of the SRUT. While the dismissed union leaders were not sentenced to imprisonment, the threat of incarceration impacted heavily on them and the morale of their members. The complainants consider that the sanctions imposed against the SRUT leaders are contrary to the Committee's principles.

605. The complainants also allege that Thailand has failed to protect workers from acts of anti-union discrimination, as set out in Convention No. 98, in the sense that, regardless of questions about the legality of the SRUT's Occupational Health and Safety Initiative that led to the dismissal of 13 union leaders, Thai law permitted, and still permits, dismissals of this nature.

606. In conclusion, the complainants believe that the conduct of the SRT, and other official institutions, is not consistent with the requirements of Conventions Nos 87 and 98, and that Thai law, which permits this conduct to take place, is consequently not consistent with the requirements of the Conventions. In the complainants' view, the requirements of the two Conventions are not met due to the prohibition on strikes in the public sector, excessive penal sanctions and fines imposed on workers and unions for taking industrial action contrary to a strike ban (that is not in conformity with ILO standards) and the tolerance of dismissals of workers and union leaders taking strike action. The complainants feel that the various Thai Governments have failed to adequately implement the recommendations of the ILO's supervisory bodies. According to the complainants, while the enactment of the SELRA in 2000 was anticipated as a watershed moment in Thai public sector industrial relations, the final text of the law did not come close to fully complying with Conventions Nos 87 and 98. Given the serious nature of the violations of trade union rights set out in the present document, the complainants request the Committee to find the Government to be in breach of Conventions Nos 87 and 98, with a view to restoring the full exercise of freedom of association, and to call on the Government to seek the immediate reinstatement of the 13 dismissed union leaders with full pay for back wages and adequate compensation and to use its best endeavours to dismiss all pending cases against the SRUT concerning the Occupational Health and Safety Initiative.

B. The Government's reply

607. In its communication dated 11 March 2014, the Government states that the cases of the 13 SRUT leaders were in labour litigation. The SRT, the employer, and the 13 dismissed SRUT leaders exercised their rights to fight a lawsuit in the process of judgment. Moreover, they also exercised their rights to appeal against the judgments of the Central Labour Court according to the Act Establishing the Labour Court and Labour Court Procedure B.E. 2522 (1979). In the Government's view, whether or not the SRT order to dismiss the 13 workers was lawful, it had already been in the process of judgment; thus, the process of judgment should continue until the Supreme Court renders the final judgments.

608. The Government indicates that, in the first legal case pending before the Supreme Court, the SRT appealed to the Central Labour Court against the Order of the national tripartite SELRC to reinstate the six workers (Mr Wirun Sagaekhum and his colleagues). The Court reversed the reinstatement order ruling that the workers neglected their duties, disobeyed a lawful order of supervisors and committed serious misconduct according to SRT regulations. Thus, the Court revoked the judgment of the national tripartite committee. In this case, the Department of Labour, on behalf of the national tripartite committee, authorized the prosecuting attorney to file an appeal with the Supreme Court.

609. The Government adds that, in the second legal case pending before the Supreme Court, the SRT exercised its right to ask the Central Labour Court for permission to dismiss the RAC under the provisions of the SELRA. The Court was of the opinion that the seven defendants encouraged and persuaded locomotive drivers, technicians and other workers of the SRT (plaintiff), to stop their duties on trains in order to prevent the plaintiff from operating diesel locomotives for passengers and transportations as usual. It held that the act of the seven defendants caused damage to the plaintiff and was in violation of sections 23 and 40 of the SELRA, as they wilfully disobeyed the plaintiff and neglected their duties, contrary to the SRT's regulation (volume 35) concerning discipline and punishment of SRT's workers (revised). The judgment of the Court allowed the SRT (plaintiff) to dismiss Mr Sawit Kaewvorn and his six colleagues (defendants) who were officers of the SRUT under section 24 of the SELRA and the Court sentenced the seven defendants to compensation for damages to the plaintiff of THB15 million. In this case, Mr Sawit Kaewvorn and the six colleagues exercised their right to appeal against the Central Labour Court's decision according to the Act Establishing the Labour Court and Labour Court Procedure on 6 November 2011. The case is now pending before the Supreme Court.

C. The Committee's conclusions

610. *The Committee notes that, in the present case, the complainant organizations allege anti-union dismissals against six SRUT Hat Yai branch committee members and seven SRUT leaders for their part in the Occupational Health and Safety Initiative launched after the Hua Hin rail disaster and the imposition of penalties for conducting an industrial action. They add that the conduct of the SRT and other official institutions exposes a number of failures in Thai law to protect the rights of workers and trade unions, which is not consistent with Conventions Nos 87 and 98.*

611. *The Committee notes in particular that:*

- (i) *considering that the Hua Hin rail disaster of 5 October 2009 was due to insufficient safety standards, the SRUT launched the Occupational Health and Safety Initiative calling on the SRT to abide by its occupational health and safety obligations under the relevant collective bargaining agreements and on its members not to work on trains if they consider the safety equipment to be faulty;*
- (ii) *on 14 and 15 October 2009, in response to the SRUT's plea, approximately 1,200 SRUT members (600 "sets" composed of a driver and a technician) refused to drive trains that had faulty dead man switches or vigilance control equipment;*
- (iii) *on 27 October 2009, the SRT dismissed the six following committee members of the SRUT Hat Yai branch working as locomotive drivers, technicians etc., for their part in the Occupational Health and Safety Initiative: Mr Wirun Sagaekhum, President of the SRUT Hat Yai branch; Mr Prachaniwat Buasri, Vice-President; Mr Sorawut Porthongkham, registration officer; Mr Thawatchai Bunwisut, labour relations officer; Mr Saroj Rakchan, public relations officer; and Mr Nittinai Chaiphum, academic officer;*
- (iv) *on 15 January 2010, the national tripartite SELRC ordered the SRT to reinstate the six workers; the NHRC also found that the SRT violated the principles of freedom of association and workers' rights and recommended to the SRT to comply with the reinstatement order;*
- (v) *following the SRT's appeal, the Thai Labour Court reversed, on 16 March 2012, the reinstatement order holding that the SRT did not act unlawfully in dismissing the*

six workers, as they had incited unrest, caused damage to the employer and staged unlawful industrial action; the SRUT has filed an appeal with the Supreme Labour Court;

- (vi) furthermore, the SRT sought the authorization from the Central Labour Court to dismiss seven national leaders of the SRUT who were protected from summary dismissal as members of the SRT bipartite RAC for breach of the national law banning strikes in the public sector;
- (vii) on 28 July 2011, the Central Labour Court granted authorization to dismiss seven SRUT leaders for their contribution to the Occupational Health and Safety Initiative (Mr Sawit Kaewvarn, President; Mr Pinyo Rueanpetch, Vice-President; Mr Banjong Boonnet, Vice-President; Mr Thara Sawangtham, Vice-President; Mr Liem Morkngan, Vice-President; Mr Supichet Suwanchatree, Secretary-General; and Mr Arun Deerakchat, academic officer) and ordered the seven defendants to pay THB15 million (circa \$500,000) to the SRT for compensation of damages; the SRUT has filed an appeal with the Supreme Labour Court;
- (viii) on 10 August 2011, the SRT issued dismissal notices to the seven union leaders, and their contracts were terminated on 25 September 2011;
- (ix) the SRT also claimed damages of THB87 million (circa \$3 million) against the SRUT, but the Central Labour Court dismissed this suit on 26 March 2012, stating that the damages payable by the seven union leaders were sufficient because they were to blame for the industrial action as they were acting in a personal capacity; and
- (x) the Occupational Health and Safety Initiative was successful as the Government agreed to recruit 171 graduates from the country's Railway Technical School in November 2009, to allocate almost THB200 billion (circa \$6.5 billion) to the improvement of rail infrastructure and to approve the SRT's plan to employ 2,438 new staff on 17 April 2012.

612. The Committee regrets that the Government limits itself to brief factual observations concerning the two legal cases pending before the Supreme Court, and notes the Government's view that, whether or not the SRT order to dismiss the 13 workers was lawful, it had already been in the process of judgment, and that, thus, this process should continue until the Supreme Court renders the final judgments.

613. The Committee observes that the dismissal of the six workers and branch committee members, on 27 October 2009, was wholly or partly based on section 33 of the SELRA (prohibition of strikes in the public sector). As far as the seven SRUT leaders and RAC members are concerned, the Committee observes that the Central Labour Court authorized their dismissal under section 24 of the SELRA due to violations of sections 23 (functions of the RAC, including prevention of labour disputes in state enterprises) and 40 (objectives of unions, including protection of the interests of the state enterprise and promotion of good employer-employee relationship), which appear to have been read in conjunction with section 33 of the SELRA.

614. The Committee recalls that, in the framework of a previous case concerning Thailand, it had already noted with regret that section 33 of the Act imposes a general prohibition of strikes [Case No. 1581, 327th Report, para. 111]. The Committee has always recognized that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests. The Committee reiterates 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). It 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. The Committee has considered that, as a general rule, railway services do not constitute essential services in the strict sense of the term [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 522, 576, 577 and 587]. Considering that section 33 of the SELRA is not in line with the principles of freedom of association, the Committee once again urges the Government to take the necessary measures without delay to abrogate this provision and to keep it informed of developments in this regard. Recalling that 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**, op. cit., para. 607], the Committee invites the Government to consider having recourse to these principles concerning minimum services, where the scope or duration of industrial action may result in irreversible damages. For instance, the Committee wishes to highlight that it is legitimate for a minimum service to be maintained in the event of a strike in the rail transport sector [see **Digest**, op. cit., para. 619].

615. In the present case, the Committee observes that the Occupational Health and Safety Initiative launched by the SRUT in the wake of the Hua Hin rail disaster of 5 October 2009, was aimed at denouncing and protesting against insufficient safety standards at the SRT (a state enterprise), which had a direct impact on the members of the railway union and on rail workers in general, with a view to ultimately improving occupational safety and working conditions. In the Committee's view, this protest action amounts to industrial action within the remit of protection of the principles of freedom of association, regardless as to whether the workers' involvement consists in its organization (that is, the seven SRUT leaders calling on workers to stop duty in case of faulty safety equipment) or in active participation (that is, the six workers and branch committee members refusing to drive defective trains). Recalling that the dismissal of trade unionists may only be based on strike prohibitions, that in themselves do not infringe the principles of freedom of association, the Committee concludes that the decision to dismiss the 13 union officials has been taken as a consequence of their legitimate trade union activities, and more specifically, of their organization or participation in the Occupational Health and Safety Initiative of October 2009. In these circumstances, the Committee once again recalls to the Government 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]. The Committee trusts that the judgments in the two appeal proceedings before the Supreme Court concerning the dismissal of the six workers and committee members of the SRUT Hat Yai branch and the authorization to dismiss the seven SRUT leaders with imposition of excessive fines against them, will be rendered in the near future, and urges the Government to ensure that the Committee's conclusions are brought to the Supreme Court's attention without delay and to provide a copy of the Supreme Court's decision once it is handed down. The Committee requests the Government to make every effort to ensure that the 13 dismissed union officials are swiftly reinstated effectively in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits pending the final judgment. The Committee requests to be kept informed of developments in this regard.

616. As for the sanctions imposed against the seven SRUT leaders, the Committee notes that they are apparently based on section 77 of the SELRA. The Committee recalls that, in the

framework of a previous case concerning Thailand, it had already noted with regret that penalties for strike action, even a peaceful strike action, are extremely severe: up to one year of imprisonment or a fine, or both, for the participation in a strike action; and up to two years of imprisonment or a fine, or both, for its instigation [Case No. 1581, 327th Report, para. 111]. The Committee recalls that penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. The Committee also emphasizes that fines which are equivalent to a maximum amount of 500 or 1,000 minimum wages per day of abusive strike may have an intimidating effect on trade unions and inhibit their legitimate trade union activities, particularly where the cancellation of a fine of this kind is subject to the provision that no further strike considered as abusive is carried out [see **Digest**, *op. cit.*, paras 668 and 670]. Considering that section 77 of the SELRA is not in line with the principles of freedom of association, the Committee once again urges the Government to take the necessary measures without delay to amend this provision to bring it fully into conformity with the principles of freedom of association and to keep it informed of any developments in this respect.

- 617.** *Moreover, while welcoming that the enterprise-initiated claim for damages against the union has been dismissed, the Committee notes with concern the complainants' indication that the court decision ordering the seven SRUT leaders to pay damages of approximately \$500,000 to the enterprise could lead to the bankruptcy of the seven individuals concerned and the dissolution of the SRUT. Considering that the fines against the trade union leaders have been imposed in response to violations of strike prohibitions, which are themselves contrary to the principles of freedom of association, and that their excessive amount is likely to have an intimidating effect on the trade union and its leaders and inhibit their legitimate trade union activities, the Committee trusts that the appeal filed by the SRUT has a suspensive effect with regard to the payment of damages, and that the Committee's conclusions on this matter are also submitted for the Supreme Court's consideration.*

The Committee's recommendations

- 618.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee once again urges the Government to take the necessary measures without delay to abrogate section 33 of the SELRA and invites the Government to consider having recourse to the principles concerning minimum services enounced in its conclusions, where the scope or duration of industrial action may result in irreversible damages. The Committee requests to be kept informed of developments in this regard.*
 - (b) The Committee trusts that the judgments in the two appeal proceedings before the Supreme Court will be rendered in the near future, and urges the Government to ensure that the Committee's conclusions are brought to the Supreme Court's attention without delay and to provide a copy of the Supreme Court's decision once it is handed down. Pending the final judgment, the Committee requests the Government to make every effort to ensure that the 13 dismissed union officials are swiftly reinstated effectively in their jobs under the same terms and conditions prevailing prior to their*

dismissal, with compensation for lost wages and benefits. The Committee requests to be kept informed of developments in this regard.

- (c) *The Committee once again urges the Government to take the necessary measures without delay to amend section 77 of the SELRA to bring it fully into conformity with the principles of freedom of association and to keep it informed of any developments in this respect.*
- (d) *Considering that the fines against the SRUT leaders have been imposed in response to violations of strike prohibitions, which are themselves contrary to the principles of freedom of association, and that their excessive amount is likely to have an intimidating effect on the SRUT and its leaders and inhibit their legitimate trade union activities, the Committee trusts that the appeal filed by the SRUT has a suspensive effect with regard to the payment of damages, and that the Committee's conclusions on this matter will also be submitted for the Supreme Court's consideration.*

CASE NO. 3011

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

Complaint against the Government of Turkey presented by

- **the Turkish Civil Aviation Union (Hava-İş) and**
- **the International Transport Workers' Federation (ITF)**

Allegations: The complainant organizations allege the dismissal by Turkish Airlines of 316 workers for taking part in a protest strike on 29 May 2012, measures impeding on the right to strike taken during the industrial action called on 15 May 2013, as well as shortcomings in national legislation in the field of industrial action

- 619.** The complaint is contained in communications dated 4 March and 25 July 2013 submitted by the Turkish Civil Aviation Union (Hava-İş) and the International Transport Workers' Federation (ITF).
- 620.** The Government sent its observations in communications dated 6 September 2013 and 5 May 2014.
- 621.** Turkey 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

- 622.** In a communication dated 4 March 2013, the complainant organizations, Hava-İş and the International Transport Workers' Federation (ITF), present a formal complaint against the Government of Turkey for violations of ILO Conventions Nos 87 and 98 and the principles of freedom of association. The complainants believe that the conduct of Turkish Airlines (hereinafter: the enterprise) in the dispute that prompted this complaint exposes a number of failures in Turkish law to protect the rights of workers and trade unions, for which the Government is responsible as an ILO member State and party to Conventions Nos 87 and 98. In their view, serious questions of compliance arise with respect to the requirement to adopt measures to enable trade unions to freely organize their activities and formulate their programmes without restrictions or impediments on the lawful exercise of these rights; to protect trade unions in their efforts to further and defend the interests of workers; and to protect workers from acts of anti-union discrimination.
- 623.** The complainant organizations describe the enterprise as the national carrier of Turkey operating scheduled services to 163 international and 41 domestic cities, serving a total of 204 airports in Europe, Asia, Africa and the Americas. As of June 2011, the airline had 18,188 employees and a fleet consisting of 200 aircraft. The airline's base is at Ataturk International Airport (Istanbul). Currently, the Prime Ministry Privatisation Administration owns a 49.12 per cent interest in the enterprise (50.88 per cent of shares being publicly traded), which according to the complainants is likely to mean that the Government is closely involved in the appointment of senior levels of management at the airline.
- 624.** The complainant organizations also indicate that Hava-İş was established in 1962 to meet the new challenges faced by aviation workers in a fledgling industry. For more than two decades, it has been a democratic and campaigning union which fights for aviation workers' rights and stands up for equality. Hava-İş has 17,000 members, which amounts to roughly 93 per cent of the entire workforce of the enterprise. It has branches in Ankara, Izmir, Antalya and the Asian coast of Istanbul and has representative offices in Adana and Dalaman. The organization belongs, since 1964, to the National Trade Union Confederation (Türk-İş) and is also an active affiliate of the ITF and its European arm, the European Transport Workers' Federation.
- 625.** The complainant organizations allege the following facts: (i) in February 2012, draft legislation introduced by the Turkish government included a clause that appeared to deliberately target Hava-İş (the only aviation union) as it gave aviation companies the right to force 40 per cent of their workforce back to work during a strike; (ii) subsequently, during the parliamentary procedures considering the draft legislation, the Primary Committee took out the strike provision and sent it back to the Plenary; (iii) on 10 May 2012, allegedly at the request of the enterprise, an amendment was introduced by the ruling party to section 29 of the existing Collective Labour Agreement, Strike and Lockout Act (Act No. 2822), which sought to add the aviation industry to the list of services where industrial action was prohibited; (iv) at the end of May 2012, the amendment was rushed through the General Assembly and swiftly approved by the President who had refused to meet with the Hava-İş leadership to discuss the attempt to outlaw the right to strike in the aviation industry; (v) on 23 May 2012, 3,000 Hava-İş members joined a rally organized by the union in front of the general management building of the enterprise, and the union's President addressed the crowd calling on workers to down tools should the strike ban in the civil aviation sector come into force; (vi) on the evening of 28 May 2012, the union sent text messages to its members calling on them to take a day's sick leave, the only form of industrial action available to them, in protest at the Government's decision to institute a strike ban in the civil aviation sector; (vii) on 29 May 2012, approximately 80 per cent of the cabin crew and technical staff called in sick and did not report to work; (viii) the company responded by dismissing 316 workers

(named in the complaint) by text, message, email and phone via messages reading: “You are sacked for joining an illegal action”; (ix) although the dismissed workers were not ordered to pay the significant fines levied on individuals taking part in unlawful industrial action as prescribed by national law, the possibility of also being fined impacted the morale of the workers; (x) immediately after dismissing the workers, the enterprise assigned flight duty to some newly hired cabin crew members, reportedly before they had finished their training, and posted job advertisements for cabin crew on its website; (xi) Hava-İş subsequently assisted all its dismissed members to bring reinstatement proceedings in the Turkish labour courts, and, as of 1 March 2013, 99 of the 316 dismissed workers have been reinstated following findings by the Turkish labour courts of unfair dismissal; (xii) the enterprise brought a criminal complaint against Hava-İş for organizing an allegedly unlawful strike and claimed damages worth US\$4 million but the prosecutor transferred the case to the Labour and Social Security Ministry which decided on 18 January 2013 that there was no reason to initiate criminal proceedings; and (xiii) the dismissed workers and supporters have maintained an open-ended protest at Ataturk International Airport since 30 May 2012.

- 626.** The complainant organizations recall that Turkey has ratified ILO Conventions Nos 87, 98 and 151; is bound by virtue of its ILO membership to the ILO Constitution, the Declaration of Philadelphia and the 1998 Declaration on Fundamental Principles and Rights at Work; and has ratified the European Convention on Human Rights (with particular reference to its Article 11), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (with particular reference to its Article 8), the International Covenant on Civil and Political Rights (ICCPR) (with particular reference to its Article 22). The complainants also refer to the Vienna Convention on the Law of Treaties (Article 31(1)).
- 627.** As regards national legislation, the complainant organizations recall that the Turkish Constitution of 1982 provides for a positive right to strike insofar as it is a corollary of collective bargaining. Its article 54(1) provides that workers have the right to strike if a dispute arises during the collective bargaining process. Article 54(7) had contained a prohibition on, inter alia, “political” strikes, which was repealed in 2010 following a popular referendum on constitutional amendments. However, as section 54(1) continues to link the positive right to strike to the collective bargaining process, the ban on political and therefore protest strikes is, in the complainants’ view, ostensibly still in force. The complainant organizations also allege that, while article 90(5) of the Constitution states that in case of a conflict between international treaties Turkey has ratified (presumed to include ILO Conventions) and national law, the provision of international law shall prevail, it is widely known that Turkish courts are reluctant to apply it.
- 628.** Recalling that the protest action organized by Hava-İş was called in response to the Government’s proposal to introduce a full-fledged ban on industrial action in the aviation industry, the complainant organizations indicate that the ban was subsequently instituted through an amendment to the Collective Labour Agreement, Strike and Lockout Act (Act No. 2822). This Act also contained in its section 25(3) an express prohibition on political strikes, sympathy strikes and other forms of industrial action not linked to the collective bargaining process: “The expression ‘unlawful strike’ means any strike called without fulfilling the conditions for a lawful strike. A strike called for political purposes, or a general strike, or any solidarity strike, shall be unlawful. The penal provisions concerning unlawful strike shall apply to occupation of the establishment, slowdown, deliberate reduction of output and any other resistance action.” Section 73 provided for sanctions, including heavy fines and imprisonment, for calling unlawful strikes aimed at influencing “decisions of the state” or participating in them.

- 629.** The complainant organizations further indicate that Act No. 2822 was repealed and replaced with the Trade Unions and Collective Labour Agreements Act (Act No. 6356), which came into force on 7 November 2012. The ban on strikes in the aviation sector was lifted. Also, the express prohibition on so-called political strikes contained in section 25 of Act No. 2822 was not transposed into Act No. 6356. However, according to the complainants, the new law still implicitly prohibits in its section 58(2) strikes that are not linked to the collective bargaining process: “Lawful strike means any strike called by workers in accordance with this law with the object of safeguarding or improving their economic and social position and working conditions, in the event of a dispute during negotiations to conclude a collective labour agreement.” In the complainants’ view, the formulation of this section is consistent with the approach taken in the revision of the Turkish Constitution whereby the explicit ban on political strikes was repealed and the implicit prohibition maintained in order to achieve the same outcome. While not replicating the heavy sanctions (fines or imprisonment) provided for in section 73 of Act No. 2822, Act No. 6356 introduced in its section 78(1)(e) and (f) fixed administrative fines for calling or taking part in unlawful strikes of five thousand or seven hundred Turkish Liras, respectively.
- 630.** The complainant organizations denounce that, despite the recent overhaul of the national industrial relations legislation, the law continues to tacitly consider protest or political strikes unlawful. It was this prohibition that ultimately led to the dismissal of the 316 employees of the enterprise who participated in the industrial action to protest against a draft law that would have adversely affected their collective bargaining power by prohibiting them from calling strikes in the aviation industry. While stressing that the proposed blanket ban on strikes in the civil aviation sector that had triggered the protest action was in contravention of the principles of freedom of association, the complainants state that they do not wish to raise the issue as the ban was subsequently lifted following the enactment of Act No. 6356.
- 631.** In the complainants’ view, albeit a clear economic interest to be able to use strike action as a tool in the collective bargaining process, strikes that go further are also protected by Convention No. 87. Thus, Article 10 of the Convention defines worker organizations as organizations for furthering and defending the interests of workers, thereby implying interests wider than the economic interests during the collective bargaining process. The complainants believe that the right to strike cannot be confined to the employer with whom workers and/or their union are in dispute, and that both sympathy and protest strikes are clearly permitted according to the principles of freedom of association.
- 632.** The complainants further indicate that the excessive penal sanctions for workers participating in industrial action and for unions calling industrial action amount to a breach of freedom of association. While the complainants are satisfied that the heavy criminal sanctions for participating in unlawful strikes contained in Act No. 2822 have been revoked, they still consider the fines prescribed by section 78(1) of Act No. 6356 to be excessive. With strike bans in a broad range of industries labelled as “essential services” and a prohibition on solidarity, sympathy, general, political and protest strikes, the scope for levying these fines is large. The complainant organizations underline that the 700 Turkish liras (TRY) fine for a worker participating in an unlawful strike amounts to approximately 50 per cent of the average monthly wage in Turkey. Moreover, they submit that while the 316 dismissed workers have not faced criminal sanctions and/or fines, the option to do so was available for the authorities under both Act No. 2822 and Act No. 6356. Moreover, according to the complainants, no statute prevented the enterprise from bringing the previously mentioned criminal complaint against the complainant Hava-İş for organizing an allegedly unlawful strike and claiming damages worth \$4 million, a fine which would have led to the dissolution of the union. The complainants believe that fines of this nature are not in line with Convention No. 87.

- 633.** The complainant organizations further allege that the Government has failed to protect workers from acts of anti-union discrimination and denounced that, regardless of questions about the legality of the protest strike that led to the dismissal of 316 employees, Turkish law permitted and still permits mass dismissal of this nature.
- 634.** The complainants conclude that the conduct of the enterprise was not consistent with the principles of freedom of association and with Conventions Nos 87 and 98, and that the national law which authorizes such actions is equally not in conformity with the relevant principles and Conventions. In the complainants' view, the new Act No. 6356 does not meet the requirements of the two Conventions due to the ongoing prohibition of protest strikes, the excessive fines imposed on workers and unions for taking industrial action against a strike ban in the aviation industry (that was itself not in conformity with ILO standards) and the tolerance of mass dismissals of workers taking strike action. The complainants request the Committee, given the serious nature of the alleged violations of trade union rights set out in the present complaint, to find the Government of Turkey to be in breach of its obligations under Conventions Nos 87 and 98, to call on the Government to amend Act No. 6356 to bring it fully into conformity with the principles of freedom of association, and to call on the Government to seek the immediate reinstatement of the remaining dismissed workers with full pay for back wages and adequate compensation.
- 635.** In a communication dated 27 July 2013, the complainants add that the courts have so far given reinstatement or compensation orders in favour of 200 of the 316 unlawfully dismissed workers. In light of the failure of Turkish Airlines to reinstate or compensate the dismissed workers as ordered by the courts and following unsuccessful negotiations for a new collective bargaining agreement, members of Hava-İş have been on strike since 15 May 2013. According to the complainants, instead of implementing the court orders, the enterprise chose to appeal the decisions. So far, 74 unlawful dismissal rulings have been upheld by the courts of appeal.
- 636.** The complainant organizations further indicate that Hava-İş invited the enterprise to commence collective bargaining negotiations in accordance with section 46(1) of Act No. 6356. The enterprise refused to accept any of the union's demands and unilaterally called an end to the collective bargaining process on the 15th day of negotiations, although section 47(3) prescribes a period of 60 days for collective bargaining from the first meeting. In accordance with section 50, a state-appointed mediator intervened to help end the impasse but stopped the process after only one meeting between the parties. Following the failure to reach agreement, Hava-İş called for industrial action in accordance with sections 60 and 61.
- 637.** The complainants allege that: (i) in the wake of the strike, the Government stated that the suspension of flights was "unacceptable" and that it would do "whatever it needs" as the enterprise was an important institution for "national security and tourism"; (ii) this threat presumably referred to section 63 of Act No. 6356, which affords the Council of Ministers the possibility to suspend a strike if it is prejudicial to national security; (iii) as of the first day of the strike, riot police brandishing tear gas were deployed to the Istanbul Atatürk Airport where the main picket line was set up; (iv) police presence was excessive, putting significant psychological pressure on the striking workers; (v) as soon as the strike was called, it became immediately apparent that the enterprise was hiring new workers and using staff from a sister airline to replace striking staff; and (vi) the airline management began forcing inappropriate alternative work onto almost 700 union members who were prohibited from taking part in this strike by law.
- 638.** According to the complainants, Hava-İş wrote to the General Directorate of the Turkish Employment Agency four times between 15 and 31 May 2013 to denounce the abovementioned practices of the enterprise during the strike as contrary to sections 65 and

68 of Act No. 6356 and to request it to call on the enterprise to discontinue these unlawful practices. The union only received a response on 17 June 2013 stating that the Agency could not take any action because the union had initiated legal proceedings. The complainants feel that the Agency had had ample time to respond to the union before it petitioned the court. On 8 July 2013, the Istanbul Labour Court ruled in favour of the union finding that the airline had unlawfully hired temporary staff and had forced inappropriate alternative work onto union members unable to take part in the strike.

- 639.** In conclusion, the complainants allege that: (i) although the Government has yet to exercise its power to suspend the strike, the very threat and ability of governments to suspend strikes on the grounds of national security is a clear violation of the principles of freedom of association; (ii) the aggressive police presence and interference is entirely disproportionate considering the number and peaceful nature of the pickets (pictures enclosed in the complaint); and (iii) the failure of the Turkish Employment Agency to inspect the actions taken by the enterprise and denounced as unlawful by the union is not in line with the principles of freedom of association.
- 640.** The complainants state that the abovementioned conduct of the enterprise is equally inconsistent with the principles of freedom of association and Conventions Nos 87 and 98, and that the national law which authorizes such a conduct is consequently contrary to the requirements of these Conventions due to the ability of the Government to suspend strike on the grounds of national security, the use of aggressive policing tactics, and the failure of state machinery to curb employer anti-union activities during strikes. They also underline that their allegations clearly demonstrate the inhospitable nature for industrial action in Turkey. The complainants request the Committee to find the Government to be in breach of its obligations under Conventions Nos 87 and 98 and to call on it to amend Act No. 6356 to bring it fully into conformity with the principles of freedom of association, and reiterate their request for the reinstatement of the dismissed workers.

B. The Government's reply

- 641.** In a brief communication dated 6 September 2013, the Government states that a disagreement occurred between Hava-İş and Turkish Airlines concerning the dismissal of 305 workers. According to the Government, the complainant Hava-İş demands: (i) the application of the court decision ruling the re-employment of 305 dismissed workers; (ii) payment for loss of severance to the relevant employees; (iii) securing the union's approval on the matter of employees' personal rights with association procedure; and (iv) ensuring unexhausted flights and extending rest periods of employees in the area of security at work.
- 642.** As regards the situation of the dismissed workers, the Government indicates that the Ministry of Labour and social security had a number of meetings with both sides to help them come to an agreement and exerted every effort to eliminate the disagreement. The dismissed workers filed a lawsuit for re-employment. The cases of 47 workers were approved by the Supreme Court of Appeals and concluded, whereas the cases of the remaining workers remain pending. In its communication dated 5 May 2014, the Government adds that the negotiations on the 24th Period Collective Labour Agreement for Enterprises which started on 6 January 2013 between Hava-İş and management have resulted in a dispute on 23 January 2013. Upon disagreement in the collective labour agreement negotiations, the strike decision taken on 10 April 2013 on the basis of section 58 of Act No. 6356 was put into effect as of 5 May 2013 in line with section 60 of that Act. The Government indicates that Hava-İş subsequently applied to the Provincial Directorate of Labour and Employment Agency as the competent authority requesting an inquiry alleging that the company was employing some workers in the enterprise who did not take part in the strike, the staff of the other airline having an organic link with the

company, and that new workers were brought from outside permanently or temporarily instead of those who participated in the strike. Since no inquiry was carried out, the union filed a complaint with the Public Inspection Institution against the competent authority and brought the matter before the court alleging that the employer violated sections 65 (“Workers excluded from taking part in a lawful strike or lock-out”) and 68 (“Prohibition of recruitment or other employment”) of Act No. 6356. Following an inspection undertaken by the labour inspectors of the Ministry it was agreed to await the court decision. The Government states that, after having evaluated the expert report certifying that other workers had been employed instead of the workers participating in the strike, the court decided to cease the employment of other workers via precautionary measure, but the ruling was appealed and subsequently reversed. The strike came to an end on 19 December 2013 upon mutual agreement, and the 24th Period Collective Labour Agreement was signed for the period 1 January 2013–1 December 2015. Concerning the 305 dismissed workers, the Government reports that a commission of six comprising three union representatives and three representatives of the management has been established by the protocol signed during the collective labour agreement, which considered appropriate to reinstate 256 dismissed workers and subsequently considered appropriate to reinstate 33 workers out of 39 workers who are union members working in Technical Co. during the negotiations between the union and the Technical Co. management. On the other hand, an agreement was reached between the parties that some of the workers who are union members could not be reinstated due to disciplinary action.

- 643.** Furthermore, the Government refers to article 51 of the Constitution (right to form trade unions and higher organizations without prior permission; right to join or withdraw from a union; freedom to join or not to join and to withdraw from a union) as well as article 54 (right to strike during the collective bargaining process if a disagreement arises; repeal of prohibition of politically motivated strikes, solidarity strikes, labour go-slows and other forms of obstruction). The Government also identifies the following provisions of Act No. 6356 as being particularly relevant to freedom of association: section 17(3) – freedom to join or not to join a union (with the corresponding sanction in section 78(1)(c)); section 19 – freedom to maintain or resign union membership (with the corresponding sanction in section 78(1)(c)); section 25 – prohibition of acts of anti-union discrimination with regard to employment on the grounds of union membership or activity, and reversed burden of proof; section 26 – freedom of operation of trade unions; section 58 – definition of strike, lawfulness of a strike in conformity with the law; no prohibition of politically motivated strikes, general and solidarity strikes, labour go-slows and other forms of obstruction; section 62 – prohibition of strikes in certain services and removal from the list of the following services: notary services; workplaces producing vaccine and serum; health workplaces such as clinics, sanatoriums, dispensaries and pharmacies except hospitals; educational institutions; day-care centres; nursing homes; and aviation services.

C. The Committee’s conclusions

- 644.** *The Committee notes that, in the present case, the complainant organizations allege the dismissal by Turkish Airlines of 316 workers for taking part in a protest strike on 29 May 2012, measures impeding the exercise of the right to strike during the industrial action called on 15 May 2013, as well as shortcomings in national legislation in the field of industrial action.*
- 645.** *The Committee notes in particular the following allegations of the complainant organizations: (i) on 10 May 2012, an amendment was introduced to the existing Collective Labour Agreement, Strike and Lockout Act (Act No. 2822) seeking to add the aviation industry to the list of services where strike was prohibited, and was swiftly approved by the President who had allegedly refused to meet with the Hava-İş leadership to discuss the matter; (ii) following the call of the union to take industrial action in protest*

against the Government's decision, approximately 80 per cent of the staff of the enterprise did not report to work on 29 May 2012; (iii) the enterprise responded by dismissing 316 workers "for joining an illegal action"; (iv) as of July 2013, the courts have issued reinstatement or compensation orders in favour of 200 of the 316 unlawfully dismissed workers, but the enterprise failed to implement them and instituted appeal proceedings, which, so far, have led to 74 unlawful dismissal rulings being upheld by the court of appeal; and (v) the enterprise brought a criminal complaint against Hava-İş for calling an unlawful strike and claimed damages worth \$4 million but the prosecutor transferred the case to the Ministry which put it aside as unfounded. The Committee notes the Government's observations, in particular that: (i) the Ministry of Labour had a number of meetings with both sides to eliminate the disagreement; (ii) the Government does not contest the allegations of the complainants, with the exception of the number of dismissed workers which, according to the Government, is 305; (iii) the labour courts ordered the reinstatement of all 305 dismissed workers and appeal proceedings are still ongoing; (iv) a bipartite commission (three union representatives and three representatives of the management) was established by the protocol signed on 19 December 2013 at the conclusion of the 24th Period Collective Labour Agreement between the union and the company for the period 1 January 2013–1 December 2015, with the mandate to deal with the issue of the 305 dismissed workers; and (v) the commission considered appropriate to reinstate 256 dismissed workers and subsequently considered appropriate to reinstate 33 workers out of 39 who are union members working in Technical Co.; on the other hand, an agreement was reached between the parties that some of the workers who are union members could not be reinstated due to disciplinary action.

646. The Committee notes that over 300 dismissals in this case occurred immediately following the industrial action of 29 May 2012 with the enterprise indicating that the decision was taken "for joining an illegal action". The assumption of the illegality of the work stoppage by the enterprise was according to the complainants based on section 25 of Act No. 2822 (then in force), which provided that strikes called for political purposes, general strikes or solidarity strikes shall be unlawful. The Committee observes, however, that at the time of the dismissals, no decision concerning the illegality of the industrial action, which would be the responsibility of an independent body such as a court, had been issued. In any event, the Committee recalls that, while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 529]. It also refers to previous comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) criticizing this prohibition contained in section 25 of Act No. 2822 and article 54(7) of the Turkish Constitution and subsequently noting with interest the repeal of the constitutional provision.

647. The Committee observes that the action taken by Hava-İş on 29 May 2012 to protest against a legislative initiative to ban strikes in the aviation sector amounts to a work stoppage in protest against a socio-economic policy issue having a direct impact on the members of the airline union and on workers of the aviation industry in general, and thus to a protest action within the remit of protection of the principles of freedom of association. Recalling that the dismissal of trade unionists may only be based on strike prohibitions that in themselves do not infringe the principles of freedom of association, the Committee concludes, as it has previously done in a similar case concerning Turkey which involved the parties to the present complaint [see Case No. 1755, para. 343], that the decision to dismiss the striking workers has been taken as a consequence of the legitimate trade union activities of the workers in question, and more specifically of their participation in the work stoppage of 29 May 2012. In these circumstances, the Committee once again recalls to the Government 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]. The Committee therefore welcomes the information provided by the Government according to which a bipartite commission was established to deal with the issue, which decided that the vast majority of dismissed workers be reinstated and reached agreement that some of the workers could not be reinstated due to disciplinary action. The Committee requests the Government to continue to make every effort to ensure, if this is not already the case, in line with the bipartite agreement, that the dismissed workers are swiftly reinstated effectively in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits.

648. Furthermore, the Committee notes that, in the complainants' view: (i) since article 54(1) continues to link the positive right to strike to the collective bargaining process, the ban on political and therefore protest strikes is ostensibly still in force; (ii) while Act No. 2822 was repealed and replaced with the Trade Unions and Collective Labour Agreements Act (Act No. 6356), and the express prohibition of strikes called for political purposes, general strikes or solidarity strikes (section 25(3) of Act No. 2822) was not transposed into Act No. 6356, the new law continues to tacitly consider protest or political strikes as unlawful; and (iii) both the Turkish Constitution and Act No. 6356 take the same approach whereby the explicit ban on political strikes is repealed but the implicit prohibition maintained in order to achieve the same outcome. The Committee welcomes that Act No. 6356 did not include the previously considered ban on strike action in the aviation sector and no longer contains an explicit ban of strikes called for political purposes, general strikes or solidarity strikes. It notes, however, that article 54(1) of the Turkish Constitution provides that the right to strike of workers is linked to a dispute during the collective bargaining process, and that section 58(2) of Act No. 6356 stipulates that a lawful strike means any strike called by workers in accordance with this law with the object of safeguarding or improving their economic and social position and working conditions, in the event of a dispute during negotiations to conclude a collective labour agreement. The Committee has consistently considered that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests. The Committee recalls that a ban on strike action not linked to a collective dispute to which the employee or union is a party is contrary to the principles of freedom of association [see **Digest**, op. cit., paras 531 and 538]. It therefore requests the Government to review together with the social partners concerned the relevant legislative and constitutional provisions with a view to ensuring that they are brought into harmony with the principles of freedom of association.
649. The Committee further notes that, while the complainants are satisfied that the heavy criminal sanctions for calling or participating in unlawful strikes contained in Act No. 2822 have been revoked, they still consider the fines prescribed by section 78(1) of Act No. 6356 to be excessive (fine of TRY700) for a worker participating in an unlawful strike, that is 50 per cent of the average monthly wage; and fine of TRY5,000 for a union for calling an unlawful strike), and the scope for levying them overly broad. The Committee welcomes that the excessive penal sanctions (including imprisonment and hefty fines) for calling or participating in unlawful strikes contained in Act No. 2822, which had been criticized previously, have not been replicated in Act No. 6356. In view of the complainants' claim of the continued excessiveness of the fines, and in the absence of any observations from the Government on this matter, the Committee, recalling that such sanctions should only be imposed as regards strikes which violate prohibitions which are themselves in conformity with the principles of freedom of association, requests the Government to consider reviewing these provisions with the social partners concerned. As regards the enterprise-initiated criminal complaint, which was denounced by the

complainants, claiming damages worth \$4 million from Hava-İş for organizing an allegedly unlawful strike, the Committee, while noting that the complaint had been considered unfounded by the Ministry, recalls that the CEACR previously noted with interest that article 54(3) of the Turkish Constitution providing for trade union liability for any material damage caused during a strike had been repealed. The Committee expects that any fines that could be imposed against trade unions for unlawful strikes will not be of an amount that is likely to lead to the dissolution of the union or to have an intimidating effect on trade unions and inhibit their legitimate trade union activities, and trusts that the Government would endeavour to resolve such situations by means of frank and genuine social dialogue.

- 650.** *The Committee notes the additional allegations of the complainants submitted by communication dated 25 July 2013 concerning the measures taken by the Government and the enterprise following the strike action called by Hava-İş on 15 May 2013 due to the failure of the enterprise to reinstate or compensate the dismissed workers as ordered by the courts and the initially unsuccessful negotiations of the new collective bargaining agreement. Deeply regretting that the Government has not replied to the allegation concerning the excessive police presence during the strike, the Committee urges it to provide its observations in this regard without delay. the Committee emphasizes that the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order; the intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order [see **Digest**, op. cit., para. 647]. With respect to the alleged recourse to the use of labour drawn from outside the undertaking during the strike, the Committee notes the Government's indication that: (i) the union brought the matter before the court alleging that the employer had violated sections 65 ("Workers excluded from taking part in a lawful strike or lock-out") and 68 ("Prohibition of recruitment or other employment") of Act No. 6356; (ii) after having evaluated the expert report certifying that other workers had been employed instead of the workers participating in the strike, the court decided to cease the employment of other workers via precautionary measure; and (iii) the ruling was appealed and subsequently reversed. Recalling that the hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association [see **Digest**, op. cit., para. 632], the Committee requests the Government to provide a copy of the appeal court's decision and information on the reasons given for reversing the ruling of the Istanbul Labour Court. It also requests the Government to ensure in the future the respect of the principles enounced above.*

The Committee's recommendations

- 651.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a)** *The Committee welcomes the agreement reached by the bipartite commission composed of representatives of Hava-İş and Turkish Airlines on 19 December 2013 that the vast majority of workers dismissed due to their participation in a protest strike on 29 May 2012 be reinstated by the enterprise, and requests the Government to make every effort to ensure, if this is not already the case, in line with the bipartite agreement, that the dismissed workers are swiftly reinstated effectively in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits.*

- (b) *The Committee requests the Government to review together with the social partners concerned section 58(2) of Act No. 6356 and article 54(1) of the Turkish Constitution so that lawful industrial action is no longer limited to strikes linked to a dispute during the collective bargaining process, with a view to ensuring that the relevant provisions are brought into harmony with the principles of freedom of association.*
- (c) *In view of the claimed continued excessiveness of the fines provided for in section 78(1) of Act No. 6356 for workers participating in or unions organizing an unlawful strike, and recalling that such sanctions should only be imposed as regards strikes which violate prohibitions which are themselves in conformity with the principles of freedom of association, the Committee requests the Government to consider reviewing the system of fines with the social partners concerned along the lines enounced in its conclusions.*
- (d) *Deeply regretting that the Government has not replied to the allegations concerning the excessive police presence during the strike called by Hava-İş on 15 May 2013, the Committee urges it to provide its observations in this regard without delay. With respect to the alleged recourse to the use of labour drawn from outside the undertaking, the Committee requests the Government to provide a copy of the appeal court's decision and information on the reasons given for reversing the ruling of the Istanbul Labour Court. The Committee also requests the Government to ensure in the future the respect of the principles enounced in its conclusions in regard to these matters.*

CASE NO. 2254

INTERIM REPORT

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

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

Allegations: Marginalization and exclusion of employers' associations in decision-making, thereby denying access to social dialogue, tripartism and consultation in general (particularly in respect of highly important legislation directly affecting employers) and by failing to comply with recommendations of the Committee on Freedom of Association; acts of violence, discrimination and intimidation against employers' leaders and their organizations; legislation that conflicts with

civil liberties and with the rights of employers' organizations and their members; violent assault on FEDECAMARAS headquarters resulting in damage to property and threats against employers; bomb attack on FEDECAMARAS headquarters; favouritism shown by the authorities towards non-independent employers' organizations

652. The Committee last examined this case at its June 2013 meeting, when it presented an interim report to the Governing Body [see 368th Report, paras 848–985, approved by the Governing Body at its 318th Session (June 2013)].
653. The International Organisation of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) subsequently sent allegations and additional information in a joint communication dated 28 August 2013.
654. The Government sent new observations in communications dated 8 October 2013, 20 February and 15 May 2014.
655. 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

656. In its previous examination of the case at its June 2013 meeting, the Committee made the following recommendations on the matters still pending [see 368th Report, para. 985]:
- (a) Regarding the abduction and maltreatment of the FEDECAMARAS leaders Noel Álvarez, Luis Villegas, Ernesto Villamil and Ms Albis Muñoz (Employer member of the Governing Body of the ILO), the latter having been wounded by three bullets, the Committee – which had taken note that two of the suspects had been arrested – deplors the offences that were committed, emphasizes their seriousness and requests the Government to take all the steps within its power to arrest the other three persons involved in the abductions and wounding, and to keep it informed of developments in the investigations. The Committee notes the Government's statements on developments in the proceedings and expresses the hope that the perpetrators of the crimes will soon be convicted and sentenced in a manner commensurate with the seriousness of the offences, so that such incidents are not repeated, and requests the Government to keep it informed in this respect. At the same time, the Committee notes that the Government's observations are not conducive to dissipating the concern it had expressed in its previous examination of the case (according to the IOE, the employers' leader Albis Muñoz asserted that neither of the suspects arrested by the Government (Antonio José Silva Moyega and Jason Manjares) were the instigators of the aggression).
 - (b) Regarding the criminal investigation ordered by the Public Prosecutor's Office into the public declarations by the President of FEDECAMARAS, Noel Álvarez, the Committee wishes to state once again that, in the context described by the IOE, the declarations did not in its opinion appear to contain any criminal content and should not normally have given rise to a criminal investigation. The Committee requests the Government to send it the decisions handed down by the authorities (Office of the Public Prosecutor, the judicial authority) in this case.
 - (c) Regarding the alleged bomb attack on FEDECAMARAS headquarters on 24 February 2008, concerning which the Government had stated that the persons charged

(Juan Chrisóstomo Montoya González and Ms Ivonne Giaconda Marquez Burgos) confessed in full to the crimes of public intimidation and unlawful use of identity papers, the Committee notes the information sent by the Government on these developments in the criminal proceedings. The Committee stresses the importance that the guilty parties be punished in a manner commensurate with the seriousness of the crimes committed and that the employers' organization be compensated for the losses and damages sustained as a result of these illegal acts. The Committee is waiting to be informed of the sentence handed down.

- (d) Observing the various acts of violence committed against FEDECAMARAS and its officials, the Committee once again drew the attention of the Government to the fundamental principle that the rights of workers' and employers' organizations can be exercised only in a climate free of violence, intimidation and fear, as such situations of insecurity are incompatible with the requirements of Convention No. 87.
- (e) Regarding the Committee's recommendation that the Government restore the La Bureche farm to the employers' leader Eduardo Gómez Sigala, and compensate him fully for all the damage caused by the authorities in occupying the farm, the Committee notes that there is a contradiction between the allegations and the Government's reply to the effect that the expropriated farm of employers' leader Eduardo Gómez Sigala was idle. Be that as it may, the Committee observes that the Government does not deny the IOE's allegation that the employers' leader Eduardo Gomez Sigala has not received any compensation. The Committee looks forward to receiving the information that the Government says it will send and again calls on the Government to return the farm without delay to the employers' leader and to compensate him fully for all losses sustained as a result of the authorities' seizure of his farm.
- (f) Regarding the alleged confiscation ("rescue", according to the Government) of the farms owned by the employers' leaders Egildo Luján, Vicente Brito, Rafael Marcial Garmendia and Manuel Cipriano Heredia, the Committee considered that it is impossible to discount the possibility of discrimination and once again requests the Government to ensure that they are granted fair compensation without delay, to initiate a frank dialogue with those affected and with FEDECAMARAS on the confiscations/rescues referred to and to keep the Committee informed of developments. The Committee requests the Government to indicate whether the payment of compensation has been decided.
- (g) Regarding the alleged lack of bipartite and tripartite social dialogue and of consultations with FEDECAMARAS, the Committee notes with concern the IOE's new allegations concerning the approval without tripartite consultation of numerous presidential legislative decrees and laws that affect the interests of employers and their organizations. Observing that serious shortcomings in social dialogue continue to exist and have even grown, the Committee reiterates its earlier recommendation, as follows:
 - deeply deploring that the Government has ignored its recommendations, the Committee urges the Government, with the assistance of the ILO, to establish a high-level joint national committee in the country to examine every one of the allegations and issues in this case so that the problems can be solved through direct dialogue. The Committee trusts that the Government will not postpone the adoption of the necessary measures any further and urges the Government to keep it informed in this regard;
 - the Committee expects that a forum for social dialogue will be established in accordance with the ILO principles, with a tripartite composition that duly respects the representativeness of workers' and employers' organizations. The Committee requests the Government to keep it informed in this regard and invites it to request technical assistance from the ILO. The Committee also requests the Government once again to convene the tripartite commission on minimum wages provided for in the Organic Act on Labour;
 - observing that there are still no structured bodies for tripartite social dialogue, the Committee emphasizes once more 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 be

preceded by detailed consultations with the most representative independent workers' and employers' organizations. The Committee once again requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subjected to genuine, in-depth consultations with the most representative independent employers' and workers' organizations, while endeavouring to find shared solutions wherever possible;

- the Committee requests the Government to keep it informed with regard to social dialogue and any bipartite or tripartite consultations in sectors other than food and agriculture, and also with regard to social dialogue with FEDECAMARAS and its regional structures in connection with the various branches of activity, the formulation of economic and social policy and the drafting of laws that affect the interests of the employers and their organizations;
- the Committee requests the Government to ensure that as part of its policy of inclusive dialogue (including within the Legislative Assembly), FEDECAMARAS is duly consulted in the course of any legislative debate that may affect employers' interests, in a manner commensurate with its level of representativeness.

The Committee deeply deplores that the Government has once again ignored these recommendations despite the fact that the Committee has been insisting on them for years.

- (h) The Committee takes note of the Government's statement that the High-level Tripartite Mission approved in March 2011, which the Government had agreed could look into the issues that were still pending with regard to Case No. 2254, has twice been postponed. The Committee is strongly of the view that the mission should take place in the near future and requests the Office to contact the Government to that effect. The Committee considers that the mission should be able to make a contribution to resolving the problems raised.
- (i) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

B. New allegations and additional information presented by the complainants

657. In their communication dated 28 August 2013, the IOE and FEDECAMARAS indicated that they were presenting additional information, thereby expanding Complaint No. 2254, which was before the Committee on Freedom of Association, against the Government of the Bolivarian Republic of Venezuela, given the existence of new facts constituting violations of both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), both ratified by the Bolivarian Republic of Venezuela. The IOE and FEDECAMARAS request once again that the case be granted priority treatment, given the serious and continued breaches by that Government of the recommendations of the Committee with regard to tripartite dialogue and the freedom of association, and that the Committee continuously monitor the situation with a view to adopting a decision that will compel the Government of the Bolivarian Republic of Venezuela once again to comply strictly with the international commitments it has undertaken within the ILO.

658. The complainant organizations emphasize, first, that the Committee has been consistent in its reports, urging the Government of the Bolivarian Republic of Venezuela to comply with its recommendations, particularly with regard to social dialogue, and requesting that bipartite or tripartite consultations be held in the various sectors, as well as to maintain a social dialogue with the inclusion of FEDECAMARAS in particular, as the most representative employers' organization of the Bolivarian Republic of Venezuela, especially with regard to the development of economic and social policy and bills or other regulations

that may affect the activities of employers and their organizations, prior to their adoption by the Executive Power and by the legislature of that country. However, and again ignoring the recommendations of the Committee, the Government of the Bolivarian Republic of Venezuela has continued to adopt and dictate regulations of great impact on both private Venezuelan companies and their workers, as well as on Venezuelan consumers, without proper tripartite consultation and social dialogue involving FEDECAMARAS. This practice affects the freedom of association and the right to organize and constitutes a permanent and continuous violation of Conventions Nos 87 and 144 of the ILO. On several occasions, the Government of the Bolivarian Republic of Venezuela has used as an argument in its defence in this complaint that FEDECAMARAS has allegedly opted out of the dialogue and has allegedly adopted a confrontational attitude towards the Government. But the fact is that the Venezuelan Government has not demonstrated to the ILO that it has held, now or in the past, the consultations in question with the most representative employers' organization in the country (FEDECAMARAS), whose status is incontrovertible in the ILO, on economic policy decisions or regulations that impact business operations and the labour movement, as required by Convention No. 144 of the ILO, nor has it given proof of the alleged self-exclusion on the part of FEDECAMARAS. As examples of calls for dialogue by FEDECAMARAS:

- Press release of FEDECAMARAS on 16 April 2013: <http://fedecamaras.org.ve/notas-de-prensa/comunicado-fedecamaras-2>;
- FEDECAMARAS: It is necessary to convene a national dialogue, 20 February 2013, interview on Venévisión: <http://fedecamaras.org.ve/notas-de-prensa/fedecamaras-es-necesario-convocar-a-un-dialogo-national>;
- FEDECAMARAS promotes dialogue with the Government from the regions: <http://fedecamaras.org.ve/notas-de-prensa/fedecamaras-impulsa-dialogo-con-el-gobierno-desde-las-regiones>;
- Notice: *La Nación* newspaper – press release by FEDECAMARAS: <http://fedecamaras.org.ve/notas-de-prensa/press-release-FEDECAMARAS>;
- FEDECAMARAS welcomes the call for dialogue from the national Government, 15 January 2013: <http://fedecamaras.org.ve/notas-de-prensa/fedecamaras-celebra-el-llamado-al-dialogo-del-gobiernonacional>;
- Video Globovisión, 10 October 2012: <http://www.youtube.com/watch?v=ONe52dWpw8>;
- FEDECAMARAS: press conference before the election process of 7 October 2012: <http://www.youtube.com/watch?v=ONe52dWpw8>.

659. Such willingness to enter into dialogue on the part of FEDECAMARAS was even recognized by President Hugo Chavez (now deceased) in his speech-proclamation to the National Electoral Council held on 8 October 2012, after being re-elected President of the Republic in the election of 7 October (see the speech in the video, starting from minute 35: <http://albaciudad.org/wp/index.php/2012/10/en-video-discurso-de-chavez-tras-ser-proclamado-para-el-periodo-2013-2019-este-debe-ser-de-mejores-logros-en-el-camino-hacia-el-socialismo/>).

660. A further manifestation of FEDECAMARAS's openness and frank willingness and interest in generating a constructive dialogue among Venezuelan businessmen can be seen in its decision to include in the employers' delegation attending the 102nd Session of the ILO International Labour Conference in Geneva last June a representative of another employers' organization (not representative), in an advisory capacity, without implying the

recognition of the greater or similar representativeness of that organization compared to FEDECAMARAS under the standards recognized by the ILO, in the form of the proposed inclusion of Mr Alfredo Cabrera, representing the National Confederation of Farmers and Ranchers of Venezuela (CONFAGAN), which was officially communicated to the People's Ministry of Labour and Social Security in a communication dated 15 May 2013.

- 661.** Although the new President of the Republic, Nicolás Maduro, elected in the elections of 14 April 2013, has promoted the holding of a few technical round tables with businessmen to address specific issues, that has not yet materialized with respect to FEDECAMARAS which is the most representative employers' organization in the Bolivarian Republic of Venezuela.
- 662.** Indeed, in the month of April 2013, the National Executive again adopted measures with significant impact on the operation of enterprises and trade unions without any previous consultation on the matter with FEDECAMARAS, the most representative employers' organization in the Bolivarian Republic of Venezuela. The measures in question are a resolution of the People's Ministry of Labour and Social Security and a presidential decree, that, with respect to the registration of trade unions and working hours, further develop the provisions of the decree with the rank, power and force of the Organic Act on Labour and Workers (that was issued on the basis of an Enabling Act by the President of the Republic), which is the fundamental law specifically governing labour relations and was issued on 7 May 2012 and published in the *Official Gazette* of the Bolivarian Republic of Venezuela Special Issue No. 6076 of the same date (that Organic Act is hereinafter referred to simply as "LOTTT"), with the entry into force of certain provisions on 7 May 2013, through a *vacatio legis*, that is, the completion of a one-year period after the entry into force of the law.

***Regulations issued by the Branch Executive
on labour matters, in violation of Conventions
Nos 87 and 144 of the ILO***

Resolution No. 8248, dated 12 April 2013, issued by the People's Ministry of Labour and Social Security, published in the *Official Gazette* of the Bolivarian Republic of Venezuela No. 40146, dated 12 April 2013, which regulates the National Register of Workers' and Employers' Organizations

- 663.** According to the provisions of article 372 of the LOTTT, trade unions, depending on their territorial scope, be it local, state, regional or national, must apply for registration and documentation from a National Register of Workers' and Employers' Organizations, that has been established under this Act. Articles 374, 517 and 520 of the Organic Act further provide that the People's Ministry of Labour and Social Security shall establish branches of the Register in each state of the country, so that those concerned can proceed with the registration of trade unions and their activities.
- 664.** Based on those provisions of the LOTTT, the People's Ministry of Labour and Social Security issued on 12 April 2013 Resolution No. 8248, which was published in the *Official Gazette* of the Bolivarian Republic of Venezuela No. 40146 of 12 April 2013, regulating the establishment and operation of the National Register of Workers' and Employers' Organizations, including both workers' organizations and those of employers.
- 665.** Among the tasks of the National Register listed in article 518 of the LOTTT are:
- (a) the registration of trade unions and employers' organizations; the review and registration of amendments to their statutes; the annual submission of accounts

covering the management of union funds; the submission and review by the Register of the list of members that the union sends in annually; the registration of changes in officers resulting from union elections or restructuring; the dissolution of a union taken over by another or a merger to create a new union;

- (b) closing the registration of a trade union either through dissolution agreed by its members in accordance with its statutes, or by decision of the Labour Court.

666. Articles 376 and following articles of the Organic Act set forth the minimum requirements in terms of membership and conditions that must be contained in the founding charters and statutes of labour organizations; article 387 provides the grounds for refusing to register a trade union if it fails to meet the requirements specified; and article 388 stipulates the actions to be reported to the Register, facts that were part of the second extension of Complaint No. 2254 made in 2012 as a result of the adoption without consultation of the aforementioned act, at which time express mention was made of the issue of the National Register of Workers' and Employers' Organizations.

667. Further developing these provisions, article 3 of the ministerial resolution stresses and makes clear that employers' organizations, trade unions and central federations or confederations must register with the Register after presenting the documents required and that these organizations will be handled at the headquarters of the Register established by the People's Ministry of Labour and Social Security in the city of Caracas (see the text of the resolution: <http://www.tsj.gov.ve/gaceta/abril/1242013/1242013-3678.pdf> # page=19).

668. Based on the above, one can see that there is a high degree of interference and control on the part of the Executive Power and the administrative authority in labour matters, which interferes with the normal functioning of trade unions. The consequence is that, if they have been denied registration or recognition by the Register for whatever reason, the unions concerned cannot undertake any act with legal effect, which limits absolutely the freedom of association under ILO Convention No. 87.

669. In that connection, one of the major impacts of this regulation is the high level of discretion in determining the admissibility of a registration application on the part of the official making the assessment of the documents; his refusal disqualifies that organization from presenting itself as a legitimate interlocutor for the employer or the workers, as appropriate. Indeed, under this resolution, the public authorities only recognize as legitimate organizations those that are registered in the Register and that appear to have the largest membership. This has had the result for employers that they, in most cases, do not know who their valid interlocutor for negotiations is or, in the worst case, there is none that is registered.

670. Therefore, these regulations, which have generated considerable legal uncertainty, impose constraints that have a very negative impact on the normal functioning of trade unions and employers' organizations, in addition to the high level of interference by the Government, and clearly violate the freedom of association and trade union freedoms protected by ILO Convention No. 87. Furthermore, this regulation was adopted, like the LOTTT, without consultation with the most representative employers' organization in the Bolivarian Republic of Venezuela, which has led to a recurring violation of ILO Convention No. 144.

Partial Regulation on working time relating to the Decree with the rank, power and force of the Organic Act on Labour and Workers, published in the *Official Gazette* of the Bolivarian Republic of Venezuela No. 41157 of 30 April 2013

671. The issue of working time or the working hours of workers was one of the matters in the LOTTT subjected to a *vacatio legis* of one year, so that its implementation would be effective on 7 May 2013.
672. Prior to that date, the new President of the Republic, Nicolas Maduro, by presidential Decree No. 44 dated 30 April 2013, delivered a Partial Regulation for the LOTTT with regard to working time, published in the *Official Gazette* of the Bolivarian Republic of Venezuela No. 41157 of 30 April 2013, which laid down specific aspects of the new working day of workers, their active working time and their hours or days off. It also established, as a general principle, the 40-hour week and two days off per week as continuous rest.
673. The regulation sought to resolve the difficulties faced by employers and workers in the implementation of the new working time under the LOTTT, particularly the continuous break of two days, for which the law had not foreseen exceptional arrangements to cover situations of continuous work or those requiring special schedules for their working days (such as sowing and the raising of livestock, which require peak periods of working without interruption), which has had negative consequences for employers, who feared increases in their payrolls to meet the need for mandatory breaks and decided to close their businesses on Sundays, and for workers, who were affected in their pay and food subsidy where their hours of rest had to increase; there were also negative effects for consumers, who tried, without luck, to access consumption-oriented businesses on weekends (restaurants, sports shops, shopping centres, etc.), many of which were closed or operated only during limited hours on weekends as a result of the restrictions arising from this regulation.
674. All of this only serves to demonstrate that there was no timely, effective dialogue when this labour legislation governing the working time was promulgated. Had things been otherwise, the disadvantages described for employers, workers and consumers would not have arisen.
675. The regulation tried to resolve some of the difficulties that had arisen and gave some consideration to some exceptions to the general working time, regulating special days for operations that are continuous and are performed in shifts (article 7), provided that the workday should not exceed 12 hours, including time to eat and rest; the total hours worked is averaged over an eight-week period and should not, on average over the period, exceed the limit of 42 hours per week. The regulation also indicated that during each seven-day period workers should enjoy at least one day of rest.
676. Regarding the weekly rest, article 13 of the regulation stipulates that all workers are entitled to two consecutive days of rest per week including Sunday, so that could be Saturday and Sunday, or Sunday and Monday. However, exceptions were established: if work cannot be interrupted (three types of grounds were offered: reasons of public interest, technical reasons, or other circumstances), different days from the usual ones may be agreed, provided that they are continuous. In cases of continuous and shift work, the days of rest may also be other than Sunday and there is no obligation that they be continuous. Those who work on Sundays are paid, in addition to normal salary, an extra 50 per cent. On the other hand, the regulation states that, if an employee works a holiday, he is not entitled to compensatory time off, but only to additional pay amounting to 50 per cent.

- 677.** Clearly, regulation of this type, which affects the daily workday and has implications for workers, employers and consumers, should be the subject of consultations with those affected prior to implementation, but again the Venezuelan Government has violated the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), without the possibility of using the presence or absence of favourable content to justify its failure to consult. This regulation continues to face difficulties in its implementation, a fact that compromises business productivity, and it should have been submitted, no excuses allowed, for public consultation, in particular with the most representative employers' organization in the Bolivarian Republic of Venezuela: FEDECAMARAS.
- 678.** Given the circumstances described and the clear and ongoing violations of the ILO Conventions mentioned, namely, Nos 87 and 144, by the Government of the Bolivarian Republic of Venezuela, action on the part of the ILO is indispensable in order to encourage and require the Venezuelan Government, once again, to give urgent and effective fulfilment of the requirement for social dialogue and strict adherence to the exercise of the freedom of association, in response to the commitments made by the Bolivarian Republic of Venezuela within the ILO.

Land recovery

Case of Vicente Brito

- 679.** In the case of the land owned by the former President of FEDECAMARAS and chairperson of the Network for the Defence of Labour, Property and the Constitution, Mr Vicente Brito, whose land is situated in the Costo Abajo area of Boquerón parish and is called "Hato Brazil", in the town of Maturín in Monagas State, the complainants add that, during the recovery of that land initiated by the Government body called the National Land Institute (INTI), the appeal filed by that citizen against the land recovery measures in July 2012 was rejected, as evidenced by the notice published on 25 April 2013 in the newspaper *La Prensa de Monagas*, appearing in the city of Maturín in Monagas State, in the public notices section on page 21, by which Mr Vicente Brito was notified that the land recovery measure with regard to his plot of land "Hato Brazil" had been ratified, and that a portion consisting of 360 hectares with 5700 square meters of that land would be allocated on a loan contract to the socialist enterprise Corporación Venezolana de Alimentos (CVAL), in accordance with the Plan of Economic and Social Development and Technical Cooperation in the Area of Soybean Production, concluded between the Federative Republic of Brazil and the Bolivarian Republic of Venezuela.
- 680.** Likewise, the notice stated that INTI urges the Regional Land Office of Monagas State to verify the potential beneficiaries of the land redistribution affecting the remaining portion of "Hato Brazil", approximately 417 hectares, and priority should be given to those potential occupants thereof who are ready to turn the land into productive economic units, after complying with the legal requirements. A portion of the land was left over, on which a treatment plant had been established, and the order was given to safeguard and protect areas where improvements had been carried out and those where there was agricultural activity or livestock production.
- 681.** The announcement gave express notice to Mr Vicente Brito and any other person who might have a subjective right or legitimate interest in the matter that, in view of the fact that the action affects their rights and interests, they could file an administrative appeal for annulment with the competent Superior Agrarian Court (see the newspaper notice in Annex E).
- 682.** As mentioned in the complaint, the land included 200 hectares of grass and cassava planted by Mr Vicente Brito, which have currently been devastated.

- 683.** Likewise, it is important to note that this new decision not only ratified the recovery of Mr Vicente Brito's land, but also recognized the rights of occupants who were not covered by the first recovery measure.
- 684.** In summary, we must note that, in all, ten different appropriations have been imposed on land owned by Mr Vicente Brito by various public authorities, such as: INTI, the mayor's office of Maturín, the Monagas State governor's office and CORPOELEC, and that his land has also been subject to invasions by groups and organizations of government supporters.
- 685.** Statements to the media by the former President of FEDECAMARAS and chairperson of the Network for the Defence of Labour, Property and the Constitution, Mr Vicente Brito, can be seen at: <http://www.lapatilla.com/site/2013/04/30/vicente-brito-el-gobierno-insiste-en-desconocer-la-propiedad-privada/>.
- 686.** The Government measure constitutes a new further violation of Convention No. 87, in as much as the person concerned is a former President of FEDECAMARAS, who has continued his official and public complaints against acts injurious to his property.
- 687.** The cases reported by FEDECAMARAS herein and forming part of Complaint No. 2254 submitted to the Committee on Freedom of Association of the ILO are evidence of harassment and constant attacks by the Venezuelan Government and its supporters against businessmen who oppose the Government publicly, including specifically the attacks against the organization that represents the largest number of employers in the Bolivarian Republic of Venezuela, FEDECAMARAS; clearly, the continued failure by the Venezuelan Government to comply with ILO Conventions Nos 87 and 144 and the facts alleged here constitute a violation of the constitutional right of citizens to economic freedom and a severe impairment of the freedom of association and the right to organize protected by Convention No. 87. Likewise, the Government has violated the rights of the most representative employers' organization in the country, FEDECAMARAS, and its right to consultation and inclusion in the social dialogue protected by ILO Convention No. 144.
- 688.** The complainants stress the following points:
- The facts underlying this extension of Complaint No. 2254 provide ever clearer proof of the continued and repeated breaches by the Government of the Bolivarian Republic of Venezuela of the principles, rights and obligations enshrined in Conventions Nos 87 and 144, signed and ratified by that country as a member of the ILO, and of its failure to comply with the recommendations of the Committee on Freedom of Association.
 - It is imperative that the Government of the Bolivarian Republic of Venezuela cease its constant violations of Convention No. 144 on tripartite consultation and social dialogue and that it include FEDECAMARAS as the most representative employers' organization in the country, in order to prevent further decisions on economic and social and labour policy from being taken in the absence of that dialogue, which is deepening the economic crisis and harming the availability of goods and services in the Bolivarian Republic of Venezuela, as such decisions do not correspond in some cases to the reality in the country.
 - The Government of the Bolivarian Republic of Venezuela must end its policy of constant aggression against the business sector and its representatives in the form of speech and legal or factual measures that contravene the constitutional rights of private property and free enterprise; those measures also constitute violations of

Convention No. 87, which protects the right of freedom of association. Also, the Government should heed the recommendations of the Committee on Freedom of Association concerning the matters complained of.

- 689.** Moreover, the complainant organizations request that the Committee on Freedom of Association, bearing in mind all of the background and the new allegations, coupled with the Venezuelan Government's failure to heed the previous recommendations of the Committee, rule again and forcefully in this case and require the Government of the Bolivarian Republic of Venezuela to cease its practices in violation of the freedom of association and of the obligation to maintain a dialogue with the most representative organizations, and to comply strictly with the obligations arising under international agreements signed with the ILO, in particular Conventions Nos 87 and 144.
- 690.** Finally, the complainant organizations count on the visit of the high-level mission of the ILO, established in order to examine in person the validity and seriousness of the allegations of violations by the Venezuelan Government contained in Complaint No. 2254 submitted to the Committee on Freedom of Association, to enable the facilitation by the ILO of mechanisms for dialogue between employers and the Venezuelan Government, which will open up possibilities for a solution aimed at reactivating production in the country for the benefit of the Venezuelan people.
- 691.** The complainants request the Committee on Freedom of Association to close the investigation of the following allegations, originally incorporated in Complaint No. 2254 but now withdrawn, namely: (1) the Organic Act of the Central Planning Commission, given that this law has a programmatic content that has not undergone the further development of regulations that would be in direct violation of ILO Conventions Nos 87 and 144, the complainants voluntarily request the ILO to remove that allegation from the investigation under Complaint No. 2254; and (2) the case of Carlos Sequera Yépez, who told FEDECAMARAS to remove his case from the allegations in Complaint No. 2254, which is why the complainants ask the ILO to remove that allegation from the investigation associated with Complaint No. 2254.

C. The Government's new replies

- 692.** In its communication dated 8 October 2013, the Government states that the Committee on Freedom of Association in its 368th Report of June 2013 agrees with some of the Government's arguments and clarifications. It is pleased, in particular, that the Committee seems to understand that it lacks the competence to designate certain acts as criminal offences. In that regard, the Committee noted that its comments were critical in nature, whereas the Government wishes to emphasize that the Committee should not comment in any way on facts without the necessary evidence or relevant supporting information, as such declarations without any sort of foundation lack objectivity. The Government of the Bolivarian Republic of Venezuela has repeatedly called on the Committee not to exceed its jurisdiction, reminding it that it is not a court with criminal jurisdiction with the authority to tell a government whether or not to file criminal charges against particular persons after an investigation, since that is up to the courts of the country. Once again the Government of the Bolivarian Republic of Venezuela reiterates its appeal to the Committee on Freedom of Association of the ILO not to continue exceeding its mandate, not to pass judgement on matters without knowledge of the facts and to stop commenting on criminal proceedings being conducted by the relevant authorities in the country.
- 693.** On the other hand, with regard to a series of unfounded accusations made by the complainants against Government officials concerning certain documents (emails) in relation to alleged financing and favouritism towards parallel organizations, the Government is pleased that the Committee has taken note of its statements regarding the

false and unfounded nature of those allegations and has indicated, very tentatively, with regard to those allegations that it will not pursue its examination thereof. The Government hopes that that will be the case, so that the consistency, transparency and objectivity that should characterize the Committee in all its decisions and in all cases presented to it are maintained.

- 694.** Moreover, the Government of the Bolivarian Republic of Venezuela wishes to place special emphasis on paragraph 983 of the 368th Report of the Committee on Freedom of Association, which states that: “With regard to its earlier recommendations (g), (h) and (m) requesting the complainant organizations for information on the Planning Commission Act, the allegations regarding the livestock farmer Franklin Brito and the expropriation of Agroisleña SA, Owens-Illinois and the Orinoco steel plant”, given that the additional information requested has not been received, the Committee will not pursue its examination of those allegations. All of this because the Government specifically asked the Committee to show consistency with its treatment of other cases and decide that the consideration of those allegations closed, as the appropriate supporting material has not been provided. The Government welcomes and appreciates this decision of the Committee and expects the decision to remain firm and final, bearing in mind that a reasonable time has already passed, as set by the Committee itself, for the complainants to support and substantiate their accusations and allegations and that that necessary foundation had not been provided. The Government, therefore, once again calls for consistency, transparency and objectivity on the part of this supervisory body in the study of this case.
- 695.** With respect to the high-level mission that has been scheduled to visit the country since its approval in 2011, the Government once again emphasizes that the visit has been postponed several times for reasons not attributable to the Government; however, once again, the Government, showing its willingness in a letter dated 16 June 2013 addressed to the Director-General of the ILO, Mr Guy Ryder, again invited the mission to visit the country from 27 to 31 January 2014. It was, therefore, untimely for the Committee on Freedom of Association in its 368th Report to request that the Office contact the Government to urge that the mission take place in the near future, given that the Government had diligently, long before the publication of the Committee’s report, officially announced the new dates for the mission. The Government of the Bolivarian Republic of Venezuela wishes to remind the Committee that, during the meeting of the Governing Body in November 2010, the complainants used this complaint to urge, as a matter of urgency, the application of article 26 against the country. During the meeting of the Governing Body in February 2011, the Government agreed to the visit to the Bolivarian Republic of Venezuela of a high-level mission to verify the pending issues concerning Case No. 2254; however, that mission, approved more than two years ago, has been postponed several times for reasons beyond the Government’s control.
- 696.** The Government of the Bolivarian Republic of Venezuela states that it has, abiding strictly by the decision of the Governing Body, been in constant communication with the Office and has been accommodating and cooperative in this case, showing its full willingness, setting precise dates, presenting schedules of activities, and providing logistical facilities, among other things.
- 697.** The Government has entirely and respectfully accepted the postponements, but it is very curious that, on the one hand, the case has been repeatedly declared to be serious and urgent by the Committee on Freedom of Association and, on the other hand, the high-level mission has been postponed at various times through no fault and for reasons not attributable to the Government, without even the provision of precise explanations. We believe, however, that something that is serious and urgent should not be delayed.

- 698.** Regarding the complainants' letter of 28 August 2013 concerning the regulations issued by the National Executive on labour matters that allegedly violate ILO Conventions Nos 87 and 144, the Government refers to Resolution No. 8248 dated 12 April 2013, issued by the People's Ministry of Labour and Social Security, which regulates the National Register of Workers' and Employers' Organizations, and wishes to state that the Register has existed from the time of the Labour Act of 1928 to the Labour Act of 1991 (the act prior to the current one). That is to say, the existence of the Register has been provided for in all of the labour acts that have been enacted in the country, including the current legislation, which has been endorsed by the ILO itself. The only change in the current Act on Labour and Workers is that the Register has now become a single National Register, whereas it had formerly been dispersed among the state authorities, which often precluded the collection of complete information about the workers' and employers' organizations in the country, but the existence of the Register and the requirements for its composition have been the same in all of the labour acts of the country. The Government adds that it was the ILO itself, specifically the Credentials Committee, which had been established for various International Labour Conferences, which called on the Government to establish objective and verifiable criteria for determining the representativeness of employers' and workers' organizations. Therefore, the Government of the Bolivarian Republic of Venezuela considers that the most objective mechanism for establishing the representativeness of such organizations is through the National Register of Workers' and Employers' Organizations, bearing in mind, among other things, the comments that the ILO has been making on the subject.
- 699.** The Government firmly denies that the legislation in question generates, as claimed by the complainants, impediments with very negative impact on the normal functioning of trade unions and, even less so, interference by the Government that undermines the freedom of association, in violation of Convention No. 87. The Government hopes that the Committee will cease focusing on this mechanism or the Government itself and will recognize this legal provision and the work being done to establish this objective, verifiable, secure and transparent system, which will make it possible to verify the representativeness of employers' and workers' organizations in the Bolivarian Republic of Venezuela, which represents a criterion requested by the ILO itself.
- 700.** Regarding the allegations concerning the Partial Regulation on working time relating to the Decree with the rank, power and force of the LOTTT, the Government states that on 30 April 2013 the Partial Regulation relating to the Decree of the Organic Act on Labour entered into effect; it refers exclusively to the regulation of working time and the workday, bearing in mind the provisions of the new LOTTT, which has been in effect since 30 April 2012.
- 701.** The Government adds that, in the context of the entry into force of the working time stipulated in the LOTTT, the Higher Labour Council, established under the seventh transitional provision of that Act and which is a body consisting of employers, workers and the Government, issued a regulation on the provisions of the Act regarding working hours, updating what was stated in the previous regulation. The most relevant aspect of the subject matter contained in this partial regulation relates to exceptions to the prohibition against working on holidays in the Labour Act.
- 702.** The Government states that there has been no conflict with regard to that issue; on the contrary, the Special Inspection Plan has shown 92 per cent compliance with the regulation; some problems exist only in specific areas, such as commerce. All of this despite the media campaign against this modern law that various political opposition organizations such as FEDECAMARAS have maintained for over a year.

- 703.** Regarding the additional information on the case of Mr Vicente Brito, the Government of the Bolivarian Republic of Venezuela states emphatically that this allegation has no connection with the proper subject matter of the Committee (Conventions Nos 87 and 98). The process of land recovery being carried out by the National Land Institute is being done for reasons of public utility and social interest, is widely supported and is based on national laws. The land recovery process is based on an established legal procedure and on national agencies that have competence in the matter. In particular, if someone believes that an action, as carried out, affects some personal right or if he has a legitimate interest in the matter, he can file a contentious administrative appeal with the Superior Agrarian Court. In addition, the Government wishes to emphasize that these procedures, carried out by the National Land Institute, which is the Venezuelan national body with jurisdiction in this matter, are not directed against trade unions or union members. The fact that someone has been a member of an organization does not exclude the application of the law and internal procedures with respect to that person. The Government of the Bolivarian Republic of Venezuela once again calls on the Committee on Freedom of Association to ensure that any allegations introduced before the Committee are relevant and consistent with the purpose, competence and field of study of the Committee on Freedom of Association. The Government strongly hopes that the Committee will not exceed its competence or seek to interfere in matters beyond its mandate, and will, on the contrary, call upon the complainants to exhaust all domestic channels and make use of the appropriate bodies to exercise existing legal mechanisms in the country. Moreover, the Government notes that the complainants have withdrawn their allegations regarding the Organic Law on the Central Planning Commission and the case of Mr Carlos Sequera Yopez.
- 704.** Regarding the cases of Mr Franklin Brito, Owens–Illinois, Agroisleña SA and SIDOR, the Government recalls that the Committee on Freedom of Association itself stated that it would not pursue its examination of those allegations, given that evidence and supporting material for them have not been provided. The Government wishes only to affirm that it hopes that that decision by the Committee will remain firm and irrevocable, so as to ensure that the supervisory body gives proof of uniformity, consistency, transparency and objectivity in the study of this case, given that the Committee referred to a lack of information from the complainants with regard to Cases Nos 2674 (paras 1160 and 1165) and 2727 (paras 1179 and 1190(d) of the 360th Report (June 2011)).
- 705.** Finally, the Government of the Bolivarian Republic of Venezuela wishes again to request the Committee to show objectivity, transparency and impartiality in its analysis of the arguments and accusations that make up this claim, since, as has been reported on several occasions, the conclusions emanating from the Committee on this case have often been unfounded, contradictory, vague and subjective, far removed from what should be expected from the supervisory bodies of the ILO. The Government reserves the opportunity to further expand its reply.
- 706.** In its communication dated 20 February 2014, the Government reiterates its appreciation for the visit by the high-level mission to the country from 27 to 31 January 2014 to address the pending issues in Case No. 2254 submitted by FEDECAMARAS and the IOE to the Committee on Freedom of Association of the ILO.
- 707.** The Government states that the unfolding of the mission provided repeated evidence of the great commitment and genuine wish on the part of the Government of the Bolivarian Republic of Venezuela to have the facts and complaints submitted to the ILO by FEDECAMARAS and the IOE clarified. The agenda of the mission was agreed between the mission and the Government of the Bolivarian Republic of Venezuela, and the mission proceeded and successfully carried out its task.

708. The Government has communicated the information received from INTI and the Public Prosecutor's Office in relation to the cases discussed during the meetings held between the mission and the aforementioned institutions. Specifically, in the information sent by the Public Prosecutor's Office and verbally supported by the representatives of that institution in the meeting held with the ILO mission, the following highlights stand out:

- On the criminal act committed against FEDECAMARAS leaders in 2010 and in which Ms Albis Muñoz was wounded, the Prosecutor's Office provided the information that the hearing of the suspects is scheduled for 17 March 2014. Furthermore, the representatives of the Prosecutor's Office stated that, after the investigation and related procedures had been carried out, those responsible had been determined. It was shown that the incident involved an ordinary crime (short abduction) in which the victims had not been attacked on account of their status as business leaders or members of FEDECAMARAS. The representatives of the Prosecutor's Office reported that the file also contains a communication in which Ms Albis Muñoz recognizes that she has been notified and expresses her desire not to attend the court proceedings.
- With regard to the incident at FEDECAMARAS headquarters in 2008 (explosive device), the Prosecutor's Office reported that the perpetrator died when placing the explosive device, two other persons involved were detained and they were prosecuted in accordance with the relevant procedure.
- In relation to the alleged investigation of Mr Noel Alvarez, the former President of FEDECAMARAS, because of some of his statements, the Prosecutor's Office reported that there were no proceedings under way, nor had he been charged with any crime, nor was there any charge against the citizen in question.

709. On the other hand, the Government's reply continues, with regard to the information that was sent by INTI on cases that form part of Case No. 2254 and which was fully explained by the representatives of that institution during the visit of the ILO mission, the following highlights stand out:

- (a) the representatives of that institution explained the difference between the process of recovering land and the expropriation procedure, as well as their constitutional and legal bases. Specifically, the cases contained in Case No. 2254 involved the procedure of land recovery, which takes place when the persons concerned do not prove ownership of the land;
- (b) in relation to the cases of Messrs Manuel Cipriano Heredia and Eduardo Gomez Sigala, the INTI representatives reported that those persons had not demonstrated their ownership of the lands that they claimed to own, so that the procedure followed was that of land recovery. The annexes include various judgments: one dated 9 February 2009 issued by the Third Superior Agrarian Court of the Judicial District of Lara State, and one dated April 8, 2010 issued by the Special Agrarian Chamber of the Social Appeals Chamber of the Supreme Court of Justice [*Llano Alto Agroindustrial Complex and Hato El Zamuro Pantaleonero v. Manuel Cipriano Heredia*]; and further judgments: one dated 2 April 2009 issued by the Third Superior Agrarian Court of the Judicial District of Lara State, and one dated 7 December 2010 issued by the Special Agrarian Chamber of the Social Appeals Chamber of the Supreme Court of Justice [*La Bureche Farm v. Eduardo Gómez Sigala*];
- (c) with regard to the case of citizen Rafael Marcial Garmendia, INTI said that that citizen had demonstrated ownership of part of the land, of which he continues to be in possession. The annexes include various judgments: one dated 3 August 2010 issued by the Third Superior Agrarian Court of the Judicial District of Lara State, and one

dated 3 August 2011 issued by the Special Agrarian Chamber of Social Appeals Chamber of the Supreme Court of Justice [*El Casquillo Stockbreeders and Bucarito Farm v. Rafael Marcial Garmendia*]; and

- (d) with regard to other cases reported in Complaint No. 2254, INTI said it has no information on these alleged cases in its records and archives.

710. Moreover, the Government states that all of the information that it receives from the institutions visited during the ILO mission to the country will be sent to the ILO.

711. All this is being done to ensure that this official information, which was sent and produced by the institutional representatives who participated in the work of the ILO mission to the country, is taken into account in the preparation of the report to be presented to the next session of the Governing Body of the ILO in March 2014.

712. Finally, the Government requests that the best efforts and strong commitment to fairness, transparency and objectivity, which should characterize this worthy Organization, are devoted in the preparation and presentation of the report on the high-level mission that visited the Bolivarian Republic of Venezuela in January 2014 in relation to matters pending in Case No. 2254 presented by FEDECAMARAS and the IOE.

713. In its communication dated 15 May 2014, with regard to the assertions of alleged acts of violence and threats against FEDECAMARAS and their employers, specifically about the sequestration and abuse against FEDECAMARAS leaders, Messrs Noel Álvarez, Luis Villegas, Ernesto Villasmil and Ms Albis Muñoz, the Government reiterates its previous information and requests the Committee on Freedom of Association not to pursue its examination of the case since it is clear that it has no connection with situations of violation of freedom of association.

714. Regarding the bombing of the FEDECAMARAS headquarters in February 2008, the Government states that the perpetrator died when placing the explosive device and the other persons involved were prosecuted.

715. Concerning the allegations relating to the confiscation of property belonging to employers' leaders Messrs Eduardo Gómez Sigala, Egildo Luján, Vicente Brito, Rafael Marcial Garmendia and Manuel Cipriano Heredia, the Government reiterates its previous comments. Concerning cases of Messrs Elgildo Luján and Vicente Brito, the Government reports that the INTI indicated that there is no information on file regarding any land recovery in respect of the mentioned names and requested that the name of the legal person registered as holding the corresponding land be reported.

716. The Government adds that the application of the Law on Land and Agrarian Development and the implementation of procedures by the State agencies in the matter did not give rise to acts of anti-union discrimination or harassment, and that the state does not show arbitrariness in the application of its land policy. Procedures and mechanisms for recovery and the expropriation of land are determined by national law and implemented by the competent bodies. Therefore, to the extent that the policies of land and agrarian development are not material to be examined by the Committee on Freedom of Association, the Government requests the Committee not to continue examining these cases since they do not give rise to any violation of freedom of association and even less to acts of anti-union persecution.

717. The Government also wishes to reaffirm that there are no plans to reform the legislation and asked that it be duly noted that clarification on the evidence reported in paragraphs 46 and 47 and in footnote 4 of the report of the high-level mission (GB.320/INS/8).

- 718.** With regard to the allegations related to the expropriation of enterprises, the Government indicates that the lack of trade union persecution in the implementation of procedures for the expropriation of enterprises on the grounds of public interest has been demonstrated. Moreover, insofar as these have not been considered either in the conclusions or in the recommendations of the report of the tripartite high-level mission which visited the country, the Government requests the Committee on Freedom of Association not to pursue the examination of these allegations. In all cases, it has been exposed that decisions have been taken to respond to repeated and chronic situations affecting production sectors of vital importance to the country such as food (packaging glass – Owens-Illinois), housing (iron bars – SIDETUR) and agricultural production (means of production for agriculture – Agroisleña SA). There was no, either from these companies or their representatives, trade union activity which could justify expropriation or that could give rise to a review by the Committee on Freedom of Association. Expropriation in question are part of the implementation of economic policy evaluation is not within the competence of the Committee since it does not affect union rights and collective bargaining. In all cases, the relevant legal procedures were followed, including a step of negotiation and conciliation during which it was not possible to agree on the assessment of the value of companies, due to which the parties have initiated legal proceedings that are ongoing.
- 719.** Concerning the alleged lack of social dialogue and tripartite consultations, the Government reiterates its previous statements and adds that it had, once again, summoned all the stakeholders in the country to a national Conference on peace and among other things, roundtables on economic matters in which FEDECAMARAS has, for the first time, taken part. The organization is currently participating in the broader social dialogue in the country. The Government notes with satisfaction the statement contained in paragraph 52 of the report of the tripartite high-level mission, whereby the mission took into consideration the inclusive dialogue highlighted by the Government and taking place in the country in the framework of the Constitution of the Bolivarian Republic of Venezuela. The Government also reaffirms that the respect and implementation of ILO Conventions on freedom of association; collective bargaining and social dialogue are not challenged in the country.
- 720.** The Government states that, in accordance with the recommendations made by the Governing Body in March 2014, a consultation process is underway with the trade unions, chambers and professional associations, land committees, rural committees, municipal councils and other peoples' organizations concerning the elaboration of the action plan for the establishment of forums for dialogue, all in full compliance with the constitutional and legal framework of the Bolivarian Republic of Venezuela scheduling. In addition, the consultation also includes themes for which the government could seek the technical assistance of the ILO.
- 721.** The ILO will be informed once the consultations with various interested organizations are concluded. Despite these consultations and as reported in its communication of 24 March 2014 delivered during the Governing Body session, the Government of the Bolivarian Republic of Venezuela reaffirms its position on the recommendations contained in the mission report:
- Concerning a dialogue round table that will address “other existing problems that may arise in the future in this area” (recovery of estates), the Government informed that this proposal is not viable to the extent that, first, it is not possible to establish a dialogue round table to address issues that could possibly arise in an uncertain future, and second, Article 82 of the Law on Land and Agrarian Development establishes a clear procedure which cannot be negotiated between two parts.

- A tripartite dialogue round table cannot be mandated to conduct consultations on laws. It could at most be one of the bodies consulted. The Constitution of the Bolivarian Republic of Venezuela is very clear about the competencies related to the consultation, the adoption or the exemption of laws.
- Discussions on laws and bills are within the competence of the National Assembly. Likewise, the socio-economic policy of the country lays under the jurisdiction of the National Executive power, in coordination with the other authorities of the State, this without limiting mechanisms for dialogue and consultation that already exist in the country and are put in place with the various sectors concerned. Consultations may be made, among other bodies, under a tripartite round table which cannot be erected as a supra-constitutional body.
- There is no national law that would violate the rights contained in the ILO Conventions mentioned since this would be unconstitutional. In this respect, there is no legal action against any law of the country for which the Constitutional Courts would have granted remedy. It is unclear to what extent the ILO tripartite mission refers to when it indicates as an objective for the tripartite dialogue round table to achieve “compliance of national legislation with ratified Conventions”. The Government recommends that the Committee on Freedom of Association and the other supervisory bodies analyse Articles 86 to 97 of the Constitution of the Bolivarian Republic of Venezuela, which is the source of all the labour laws of the country, in order to determine whether some of the provisions are contrary to ratified Conventions.
- The judicial or administrative procedures in force must be concluded and carried out by the competent institutions in accordance with the national legislation.

722. As a conclusion, the Government reaffirms all aspects of its written reply given during the discussion at the Governing Body in March 2014 and which contained replies to the report of the tripartite high-level mission conducted in the Bolivarian Republic of Venezuela (GB.320/INS/8). The Government once again considers with concern the maintenance of the assumption that the facts reported by employers’ organizations are treated as anti-union acts of persecution whereas it has been demonstrated that these acts constitute common crime acts for some and for others that the disclosures are of unfounded nature. The Government requires once again that the complaints submitted to the Committee on Freedom of Association or any other body be received only when accompanied by the relevant evidence in order to avoid unnecessary procedures and discomfort. It is shown that the mission conducted to analyse the remaining issues of Case No. 2254 exceeded its jurisdiction by including in its report new elements that do not correspond to the mandate given by the Governing Body. In particular, relevant information related to the mandate of the mission has been omitted while other elements outside its mandate and competence have been widely developed in the report. The Government will not deliver on supposed facts contained in the report of the mission and which exceeds its competences. It urges the Committee on Freedom of Association to analyse the alleged new facts when they are accompanied by relevant evidence and findings.

D. High-level tripartite mission to the Bolivarian Republic of Venezuela

723. The mission in question took place from 27 to 31 January 2014, and the report on its work can be found in document GB.320/INS/8. The appendix contains the decision of the Governing Body on that report, which was adopted on 27 March 2014.

E. The Committee's conclusions

724. *The Committee notes the new allegations and additional information from the IOE and FEDECAMARAS, the Government's new replies, the report of the high-level tripartite mission held in the country from 27 to 31 January 2014 and the decisions of the Governing Body at its 320th meeting in March 2014, and in particular the decision concerning the remission of mission's report to the Committee for consideration in the examination of this case (No. 2554). The Committee welcomes the mission's report and appreciates that the Government has provided facilities and much information to the mission. The Committee also notes that the mission wishes in its report to thank all its partners for their cooperation.*
725. *The Committee notes that the complainants have withdrawn, for the reasons stated in their letter of 28 August 2013, the allegations concerning the Organic Law of the Central Planning Commission and Carlos Sequera Yopez, which were analysed in previous examinations of Case No. 2554. The Committee notes, moreover, that, as stated in the mission's report and the Government's reply, there is, according to the authorities (the Public Prosecutor's Office), no criminal investigation under way in connection with public statements made on 23 December 2010 by the then President of FEDECAMARAS, Noel Alvarez, who was neither indicted nor called as a witness. The Committee addressed that issue in its previous report [see the 368th Report, para. 985, recommendation (b)] and, taking into account the information obtained by the mission, will not pursue its examination of that issue.*
726. *The Committee further notes the Government's view that the Committee has exceeded its mandate in certain cases relating to criminal proceedings and to the recovery of land from leaders of the employers. The Committee has already responded to that opinion in previous examinations of the case and refers to the conclusions it made in that regard [see, for example, the 363rd Report, para. 1325]. The Committee observes that the Government considers that the mission exceeded its powers because of the inclusion in the report of new elements beyond outstanding issues in the framework of Case No. 2254. Nevertheless, the Committee believes that the mission did not exceed its mandate and expressed information obtained on outstanding issues.*

Recommendations (a), (c) and (d) from the previous examination of the case

727. *The Committee recalls that the pending issues in this respect refer to the abduction and maltreatment of the FEDECAMARAS leaders Noel Álvarez, Luis Villegas, Ernesto Villamil and Albis Muñoz (Employer member of the Governing Body of the ILO), the latter having been wounded by three bullets and to the alleged bomb attack on FEDECAMARAS headquarters on 24 February 2008.*
728. *The Committee notes the Government's information in its communication of 20 February 2014 and the information received from the Public Prosecutor's Office mentioned in the report of the high-level tripartite mission and, in particular, that: (1) with regard to the crime committed against the FEDECAMARAS leaders in 2010 and in which Albis Muñoz was wounded, the Prosecutor's Office provided the information that the hearing of the suspects before the court is scheduled for 17 March 2014; also, representatives of the Prosecutor's Office stated that, after the investigations and relevant procedures had been completed, those responsible had been identified and that the incident had involved a common crime (short abduction) and that the attack had not been related to the victims' status as business leaders or FEDECAMARAS members; (2) the file contained a document in which Albis Muñoz stated that she had been notified and expressed her desire not to attend the court proceedings; and (3) with regard to the act committed at FEDECAMARAS*

headquarters in 2008 (explosive device), the Prosecutor's Office reported that the perpetrator had died while placing the explosive device and that two others involved had been arrested and prosecuted in accordance with the appropriate procedure.

729. *The Committee notes the information obtained from the mission's report on pending issues relating to the acts of violence.*

9. The mission received information from senior representatives of public institutions regarding the measures adopted to combat common criminality, and in particular the launch of the national anti-violence programme with the coordinated participation of all state bodies and the civil society, seeking a change in to the situation of violence. They added that the level of common violence, which has oscillated over the last 25 years, is not directed at the social partners and, therefore, in no way restricts the exercise of freedom of association. According to the Forensic, Penal and Criminal Investigations Unit (CICPC), the measures taken over the last year have already resulted in a significant decrease in the number of murders and abductions.

Allegations of acts of violence and threats against the employers' organization FEDECAMARAS and its officials

10. Regarding the abduction and maltreatment of the FEDECAMARAS officials, Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (who was shot and seriously injured) in October 2010, the CICPC reported that within a week of the event, the police's part of the investigation had been completed, leading to the identification of the four perpetrators of the theft and assault (one of whom recently died in a confrontation with the police) who were part of a violent gang that had committed similar crimes prior to this event. The hearing in the proceedings against the accused had been postponed due to Ms Albis Muñoz's decision not to attend the proceedings. The authorities indicated that the case is pending trial and that another hearing has been scheduled for 17 March 2014.

11. In this respect, the mission noted that FEDECAMARAS reported that: (1) the Public Prosecutor's Office charged three individuals (Mr Andrius Hernández, Mr Antonio Silva Moyega and Mr Jaror Manjares) with the offence; (2) on 10 February 2011, the 35th preliminary proceedings court of Caracas held the first preliminary hearing and admitted the evidence provided; (3) on 23 December 2012, the prosecutor brought charges against two of the accused (Mr Hernández is reported to have died in a confrontation with the police); Ms Albis Muñoz did not identify the accused as the perpetrators; (4) the accused were charged with, *inter alia*, brief abduction, the attempted aggravated theft of a vehicle and criminal association; (5) on 13 April 2012, the date of the first trial hearing was announced, but it was deferred on a number of occasions and, although the preliminary proceedings court upheld the charges, it has not yet opened the trial; and (6) to date no one has been found responsible for the offence and the trial against the accused has not even been formally opened.

12. As regards the allegation that a criminal investigation was launched following the public declarations of the President of FEDECAMARAS, Mr Noel Álvarez, on 23 December 2010, the Public Prosecutor's Office reported that no such investigation exists and that Mr Noel Álvarez had been neither charged nor summoned as a witness.

13. Regarding the bomb attack on the FEDECAMARAS headquarters on 24 February 2008, the CICPC indicated that the person who threw the explosive (a grenade) died in this act of violence. Two other persons linked to the event were identified and proceedings against them are currently at the oral and public trial stage. The CICPC also indicated that it had not been able to determine the motives for the attack and it recalled that it had occurred at a time when similar attacks were being carried out on several embassies.

14. The mission noted that FEDECAMARAS reported that: (1) the person who planted the bomb (the police inspector, Mr Héctor Serrano) died as a result of the explosion; (2) on 26 February 2008, a complaint was filed with the Public Prosecutor's Office; (3) on 26 August 2009, the Public Prosecutor's Office issued a ruling ordering the case to be closed for lack of sufficient evidence to establish a guilty party, which was appealed by FEDECAMARAS; (4) on 6 May 2010, the CICPC announced the detention of a public official, police officer Mr Crisóstomo Montoya, for an act of terrorism in planting the explosive device

(it is reported that this person would have been released) and Ms Ivonne Márquez was also implicated; (5) the 28th court of first instance scheduled the public hearing of the oral trial for 4 November 2011, which was deferred to 30 October 2013; and (6) to date no one has been found guilty of the attack.

730. *The Committee takes note of the new moral character information concerning acts of intimidation and violence received by the mission:*

15. The mission noted that FEDECAMARAS reported that the authorities accuse the organization of waging an “economic war” against the Government. Specifically, FEDECAMARAS reports that: (1) in the context of the country’s increasing economic problems, the Government developed a communication strategy in the run-up to the municipal elections of 8 December 2013 aimed at laying the blame for the crisis on the Venezuelan productive sector, and in particular on FEDECAMARAS, the National Commerce and Services Council (CONSECOMERCIO) and the Venezuelan–American Chamber of Commerce and Industry (VENAMCHAM), whom it accused of waging an “economic war” against the Government and raising the inflation rate through speculation and by hoarding products; (2) the Government first distributed a poster in the streets, also placing it in some public offices along with messages inciting hatred against various association leaders (the Presidents of FEDECAMARAS, CONSECOMERCIO, the National Association of Supermarkets (ANSA), the Venezuelan Food Industry Association (CAVIDEA), the National Federation of Stockbreeders of Venezuela (FEDENAGA), among others, accusing them of starving the people; (3) in November 2013, the President of the Republic appeared on national television personally attacking the current president of FEDECAMARAS and accusing him of leading the “economic war”;¹ (4) further attacks were carried out against the FEDECAMARAS headquarters: (i) on 25 October 2013, the Bolivarian Socialist Confederation of Workers of Venezuela sent out a press release calling for the seizure of the headquarters of FEDECAMARAS, CONSECOMERCIO and VENAMCHAM on 27 October; on 27 October, the state television channel VTV invited the public to join the demonstration; and (ii) on 20 November 2013, the “Tupamaro” Bolivarian armed community group took the FEDECAMARAS headquarters, carried out acts of violence, attacked the security guards and brought down the institution’s flag to burn it; (5) prior to the municipal elections, the Government initiated occupations of shops (mainly chains selling electrical appliances), denouncing surcharges of 1,000 per cent and inciting the population to go to the shops to “empty the shelves” in some kind of product clearance. Shop seizures were shown on national television, systematically featuring accusations against FEDECAMARAS, CONSECOMERCIO and VENAMCHAM as those responsible for the “economic war against the country”. Supermarkets, hardware, toy, textile and shoe shops, as well as shops selling car parts, were seized and the goods taken have not been replaced. FEDECAMARAS officials told

¹ The mission received a video which, among a number of televised statements made against FEDECAMARAS, showed the President of the Republic saying the following: (1) “the country’s political way of life will continue but let us not try to influence its economic development. I am addressing myself to the leaders of FEDECAMARAS. Mr Jorge Roig, I know that you are involved in various schemes. Mr Jorge Roig, Mr Chairperson of CONSECOMERCIO, and the Director of the Board of VENAMCHAM, you three are once again actively conspiring against the Venezuelan economy. I call on you to put an end to your conspiracies against the Venezuelan economy”; (2) “And I don’t care what FEDECAMARAS, CONSECOMERCIO or the Democratic Unity Round Table (MUD) may say about me, or us. They are the capital, capitalism, the speculators, the beginning of the end”; and (3) “Jorge Roig, this also includes you, you irresponsible capitalist, you irresponsible oligarch.” The video also features the President of the National Assembly making the following public statements: (1) “The President of FEDECAMARAS has now taken the lead, he has taken the lead and is there leading the conspiracy, at the forefront of the conspiracy; at the forefront of the conspiracy against the nation, the President of FEDECAMARAS, Mr Jorge Roig”; (2) “Mr Jorge Roig, take note of what happened here to the enemies of the nation, do not go looking for trouble or you are going to find it”; (3) “I know who they are, what they do, where they live, and who they mix with. For example, I know that at the weekend, Jorge Roig was frantically looking for his passport and couldn’t find it; it was in the boot of a car. I know this and I know what they are doing.”

the mission that for two years, and even during the Government's offensive, it has continued to request dialogue to resolve the country's problems, but that the Government maintains its offensive against FEDECAMARAS, refusing to enter into dialogue with the institution. They added that the President of FEDECAMARAS has been threatened with imprisonment.

- 731.** *The Committee takes note of the conclusions of the high-level tripartite mission relating to the alleged acts of violence [see the mission's report: paras 42–44].*

42. The mission noted with concern that, according to the testimonies given to the mission and to press reports during its visit, there is a very large number of acts of violence that stem from common criminality in the country. In this regard, the mission is grateful for the information communicated by the Government according to which measures have been taken to launch a national anti-violence action plan in which all state institutions and citizens will participate in a coordinated manner to seek a change in the situation of violence; according to the authorities, the measures adopted over the last year have led to a significant decline in the number of murders and abductions.

43. The mission received information on the acts of violence denounced in Case No. 2254 which affect employer leaders and the headquarters of FEDECAMARAS, which will be examined and assessed by the Committee on Freedom of Association. The mission noted that although, according to the Government, the investigations into some of the acts were concluded very quickly – for example, in the case of the attack against Ms Albis Muñoz and the temporary abduction of other employer leaders, where the police investigation was concluded in five days – the judicial proceedings are still ongoing and that the corresponding verdicts have therefore not been handed down, despite the fact that the events occurred in 2008 and 2010. The Government states that the hearing in the proceedings against the persons accused of attacking Ms Albis Muñoz was postponed owing to the latter's failure to appear. The judicial delay resulting from this and other serious acts that took place several years ago is a cause for concern for FEDECAMARAS. While it notes that the hearing in the case of the attack against Ms Albis Muñoz is scheduled to take place on 17 March 2014, the mission emphasizes the importance of concluding the legal proceedings resulting from the various acts of violence mentioned above in the very near future in order to determine responsibilities and to issue severe punishments to the culprits.

44. The mission noted with concern, firstly, the information recently received on the use of the media to make serious personal allegations against leaders of FEDECAMARAS, CONSECOMERCIO and VENAMCHAM to the effect that they are waging an “economic war” against the Government, and, secondly, the fresh allegations of acts of violence against the headquarters of FEDECAMARAS by certain Bolivarian organizations and the Government's incitement to vandalism and to the sacking of supermarkets and businesses. In this regard, the mission highlights the seriousness of these acts and that a climate free from intimidation, threats and excessive language is essential for the effective exercise of trade union rights and freedom of association. This is the only way to achieve normality in the organizations' activities and solid and stable industrial relations.

- 732.** *The Committee notes that the plan of action to be developed by the Government in relation to the complaint, setting specific stages and time frames, should include “the identification of the causes of problems related to judicial and administrative proceedings affecting workers' and employers' organizations and their representatives with a view to finding solutions that will settle all matters pending in Case No. 2254”.*

- 733.** *The Committee wishes to express its deep concern at the serious and various forms of stigmatization and intimidation carried out by the Bolivarian authorities or groups or organizations against FEDECAMARAS as an institution, against its affiliated organizations and against their leaders and affiliated companies, which are widely described in the mission's report, including threats of incarceration, the placement of posters instigating hatred, accusations of conducting economic warfare, the seizure of FEDECAMARAS headquarters, the occupation of businesses, the incitement to vandalism and looting, etc. The Committee recalls that for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out*

their activities in a climate of freedom and security. This implies that, in so far as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers' organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities. Furthermore, the Committee recalls that 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 that a climate of violence, in which attacks are made against trade union premises and property, constitutes serious interference with the exercise of trade union rights; such situations call for severe measures to be taken by the authorities, and in particular the arraignment of those presumed to be responsible before an independent judicial authority [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 36, 43 and 191]. The Committee recalls that the recent events join others in the past, which include attacks on FEDECAMARAS headquarters in 2007 and 2008 and the kidnapping and mistreatment in 2010 of several of the employers' leaders in FEDECAMARAS, and bullet wounds inflicted on a leader. The Committee wishes to emphasize the violence of those attacks, which should have no place in a state governed by the rule of law, and which respects the fundamental rights of the person. The Committee draws the attention of the Government to the importance of taking strong measures to prevent such threats, statements that incite hatred towards and the looting of people and organizations that are legitimately defending their interests in the framework of Conventions Nos 87 and 98, ratified by the Bolivarian Republic of Venezuela, and, in the case of FEDECAMARAS, its leaders and affiliates. The Committee once again draws the Government's attention to the fundamental principle that the rights of workers' and employers can only develop in a climate free from violence, intimidation and fear, as such insecure situations are incompatible with the requirements of Convention No. 87. The Committee requests the Government to ensure compliance with this principle.

734. Furthermore, the Committee regrets that the criminal proceedings in the case concerning the bombing of the headquarters of FEDECAMARAS on 26 February 2008 and the kidnapping and mistreatment in 2010 of the leaders of that organization, Noel Alvarez, Luis Villegas, Ernesto Villamil and Albis Muñoz (who was wounded by three bullets) have not yet been completed, expresses the firm hope that they will be concluded without further delay and requests the Government to keep it informed. In the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. The Committee emphasizes that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights, and that justice delayed is justice denied [see **Digest**, op. cit., paras 50, 52 and 105]. The Committee reiterates the importance of ensuring that the perpetrators of these crimes be sentenced in a manner commensurate with the severity of those crimes, so that they are not repeated, and of compensating FEDECAMARAS and the leaders concerned for the damage caused by those illegal acts.

Recommendations (e) and (f) of the previous examination of the case

- (e) Regarding the Committee's recommendation that the Government restore the La Bureche farm to employers' leader Eduardo Gómez Sigala and compensate him fully for all the damage caused by the authorities in occupying the farm, the Committee notes that there is a contradiction between the allegations and the Government's reply to the effect that the expropriated farm of employers' leader Eduardo Gómez Sigala was idle.

Be that as it may, the Committee observes that the Government does not deny the IOE's allegation that Eduardo Gómez Sigala has not received any compensation. The Committee looks forward to receiving the information that the Government says it will send and again calls on it to return the farm without delay to the employers' leader and to compensate him fully for all losses sustained as a result of the authorities' seizure of his farm.

- (f) *Regarding the alleged confiscation ("rescue", according to the Government) of the farms owned by the employers' leaders Egildo Luján, Vicente Brito, Rafael Marcial Garmendia and Manuel Cipriano Heredia, the Committee considers that it is impossible to discount the possibility of discrimination and once again requests the Government to ensure that they are granted fair compensation without delay, to initiate a frank dialogue with those affected and with FEDECAMARAS on the confiscations/rescues referred to and to keep it informed of developments. The Committee requests the Government to indicate whether the payment of compensation has been decided.*

735. *The Committee notes that, in the case of the land owned by the former President of FEDECAMARAS and chairperson of the Network for the Defence of Labour, Property and the Constitution, Vicente Brito, situated in the Costo Abajo sector of Boqueron parish, referred to collectively as "Hato Brazil", in the town of Maturín in Monagas State, IOE and FEDECAMARAS report that, in the context of the recovery of that land initiated by the Government body called INTI, the appeal filed by Vicente Brito with the Institute against the land recovery in July of 2012 was rejected, which ratified the recovery procedure being applied to the plot of land called "Hato Brazil", and that a portion of that land consisting of 360 acres with 5,700 square meters will be transferred to the socialist enterprise Corporación Venezolana de Alimentos (CVAL) on a loan contract, in accordance with the Plan of Economic and Social Development and Technical Cooperation in the Area of Soybean Production between Brazil and the Bolivarian Republic of Venezuela. Also, according to the complainant organizations, the INTI is urging the Regional Land Office of Monagas State to verify the potential beneficiaries of the land regularization, which was what happened to the remaining portion of "Hato Brazil", approximately 417 acres, and to give priority to those occupants thereof who are ready to turn the land into productive economic units, after complying with the legal requirements. A piece of land was set aside, on which a treatment plant had been established and an order was given to safeguard and protect areas on which improvements had been made and those where there was agricultural activity or livestock production. Notice was given to Vicente Brito and any person who might have a personal right or legitimate interest in the matter, that, considering that the action taken affected those rights and interests, they could exercise the recourse of filing an administrative appeal for annulment with the appropriate Superior Agrarian Court. As was argued in the complaint, that lands included 200 hectares of grass and cassava planted by Vicente Brito, which were now devastated. Furthermore, according to the allegations, this new decision not only ratified the recovery of Vicente Brito's land but also recognized the rights of occupants who had not been covered by the first recovery measure. In summary, there are now ten appropriations, in total, affecting land owned by citizen Vicente Brito, brought by various public authorities, such as INTI, the city hall of Maturín, the government of Monagas State and CORPOELEC, and his land had also been subject to invasions by groups and organizations supporting the Government. The complainant organizations finally indicate that this government measure constitutes a new and continuing violation of Convention No. 87 on freedom of association, as the person affected is a former President of FEDECAMARAS who has maintained his official and public complaints about acts or incidents attacking his property.*

736. *The Committee notes that the Government states emphatically that the allegations concerning Vicente Brito bear no relation to the proper subject matter of the Committee on Freedom of Association (Conventions Nos 87 and 98). The process of land recovery being carried out by the National Land Institute is being done for reasons of public utility or*

social interest and is widely supported and based on national laws. The land recovery involves an established legal procedure and national agencies that have jurisdiction in the matter, especially if someone believes that the act performed affects some personal right or has a legitimate interest in the matter, in which case one can file a contentious administrative appeal with the Superior Agrarian Court. In addition, the procedures being carried out by the National Land Institute, the Venezuelan State body competent in this area, are not directed against trade unions or trade union members. The fact that someone has been part of an organization does not preclude the application of the law and domestic procedures.

737. *The Committee notes that the Government offers the following summary of the information submitted to the high-level tripartite mission: (a) the representatives of INTI make a distinction between the process of land recovery and that of expropriation and their constitutional and legal bases. Specifically, the cases contained in Case No. 2254 relate to procedures of land recovery, which are applied when the persons concerned do not prove ownership of the land; (b) with regard to the cases of Manuel Cipriano Heredia and Eduardo Gomez Sigala, the INTI representatives reported that those persons did not demonstrate ownership of the lands they claimed to possess, so that the procedure followed was that of recovering land. Various judgments were annexed by the Government, one dated 9 February 2009, issued by the Third Superior Agrarian Court of the Judicial District of Lara State, and one dated 8 April 2010, issued by the Special Agrarian Chamber of the Social Appeals Chamber of the Supreme Court of Justice [Llano Alto Agroindustrial Complex and Hato El Zamuro Pantaleonero v. Manuel Cipriano Heredia]; along with more judgments, one dated 2 April 2009, issued by the Third Agrarian Superior Court of the Judicial District of Lara State, and one dated 7 December 2010, issued by the Special Agrarian Chamber of the Social Appeal Chamber of the Supreme Court of Justice [La Bureche Farm v. Eduardo Gomez Sigala]; (c) with regard to the case of citizen Rafael Marcial Garmendia, INTI said that he had demonstrated his ownership of a portion of the land, of which he continues to be in possession. In this respect, the Government annexed various judgments, one dated 3 August 2010, issued by the Third Superior Agrarian Court of the Judicial District of Lara State, and one dated 3 August 2011, issued by the Special Agrarian Chamber of the Social Appeals Chamber of the Supreme Court of Justice [El Casquillo Farming and Stockraising and Bucarito Farm v. Rafael Marcial Garmendia]; and (d) with reference to other cases reported or contained in Case No. 2254, INTI said that it has no information on those alleged cases in its records and archives. The Committee expresses its surprise at the Government's statement that it does not exist in the archives of the INTI information concerning possible recoveries or expropriation of land for Messrs Egildo Luján and Vicente Brito.*

738. *The Committee takes note of the conclusions of the high-level tripartite mission on the allegations with regard to the seizure of farms belonging to employers' leaders or former leaders.*

16. The mission received information from the authorities of the Ministry of Labour and Social Security, and in particular of the Ministry of Agriculture and Land and of the National Land Institute (INTI) as well as from the Supreme Court of Justice in relation to three of the cases contained in Case No. 2254 (Mr Sigala, Mr Garmendia and Mr Heredia). They indicated that in those three cases the land was recovered on the grounds that it had been left idle, and that it was recovered rather than expropriated given that the occupants had not been able to demonstrate their ownership of the land.² In any event, the procedure defined

² The Land and Agrarian Development Act of 29 July 2010 refers to the procedure for land recovery in section 82, which establishes the following: *The National Land Institute (INTI) is entitled to recover land in its possession or at its disposal which is being illegally or illicitly occupied. To this end, it will initiate the appropriate recovery proceedings ex officio or by filing a complaint, without prejudice to the guarantees set forth in sections 17, 18 and 20 of this act. Furthermore, the National*

by the Land Act was followed and the rules of due process observed. They indicated that in all cases of land recovery, where the persons who occupied the land are able to demonstrate that they have made improvements to it, they are entitled to compensation (according to the Government, in 2013, US\$60 million was paid out throughout the country in compensation for recovery procedures).³ They also reported that Venezuelan law does not recognize acquisitive prescription against the State (with the exception of indigenous peoples). They indicated that in recent years, a large number of recoveries have been carried out (approximately 1,500) and that those affecting the officials of FEDECAMARAS are only a minute proportion of the recoveries, which shows that neither employers' nor workers' organizations are being persecuted through the land recovery policy.

17. As regards the case of Mr Sigala (La Bureche farm), the INTI authorities reported that the following actions had been carried out: (1) the administrative courts declared the land idle and the recovery proceedings were initiated on 12 March 2008; Mr Sigala's authorized representatives filed an appeal for annulment before the High Agrarian Court of Lara State, which was rejected in a ruling of 2 April 2009; on 7 December 2010, the Special Agrarian Chamber rejected an appeal against that ruling. Furthermore, according to the information communicated by the Supreme Court of Justice, two appeals for annulment under case AA60-S, brought before the administrative courts by Mr Sigala, are still pending (in a ruling of 3 November 2011, the Supreme Court of Justice upheld one of the appeals for annulment submitted by Mr Sigala on grounds of procedural errors. The case was referred to a court of appeal.). The state representatives indicated that to date Mr Sigala's ownership of the estate has not been demonstrated in court. FEDECAMARAS representatives referred the mission back to the information submitted to the Committee on Freedom of Association, in particular highlighting that its recommendations regarding the return of land and the payment of compensation have not been carried out.

18. As regards the case of Mr Heredia, it was reported that the appeals that he filed were rejected and that he has not been able to demonstrate his ownership of the land. As regards the case of Mr Garmendia, the recovery carried out only affected part of the land that

Land Institute (INTI) is entitled to recover land even in cases where ownership is attributed to private individuals, if upon an examination of the documents required of the person to whom ownership is attributed, that person is unable to provide the complete sequence of ownership or chain of title of the estate and other alleged rights, from the release duly authorized by the Venezuelan State until the duly registered title deeds in the name of the person claiming ownership. This shall in no event prejudice administrative appeals and legal proceedings available to the person concerned. The following constitute land that has been duly released by the Venezuelan State: (1) simple, complete and irrevocable sales by the former National Agrarian Institute (IAN) to private individuals (natural or legal persons) provided that they are in conformity with IAN resolutions; (2) allocations of land by the Ministries of Development, Agriculture and Husbandry, the Finance Department, and the Ministries of Agriculture, Industry and Commerce, to individuals or groups. For such allocations to take full legal effect, they must be registered in the records of the relevant ministry and in the Official State Journal. Land allocations by the Presidents of the states of the Federation in accordance with the resolution of 13 May 1891; (3) military property, these being allocations of uncultivated land or land confiscated from Spanish emigrants which were granted to patriot soldiers as a reward for their participation in the war of independence against the Spanish Empire, under a process of entitlement, in so far as they constituted a transfer of ownership rights over lands belonging to the State; (4) titles granted by the Spanish Crown, either as gifts, following the retroactive purchase of occupied land, or under royal charter. In the case of retroactive purchases, they must have been duly approved under the laws of the Republic; (5) court rulings on land recovery and on proceedings to establish ownership and acquisitive prescription, declared final, with the force of *res judicata*; and (6) sales transacted by state-financed government entities and duly approved by the Counsel-General of the Republic. The Government informed the mission that a reform to the act is currently being considered in order to simplify the criteria for determining land productivity.

³ As regards the payment of compensation for improvements made to recovered lands, the mission considers it noteworthy that section 86 of the Land and Agrarian Development Act provides that: "Under this act, the illegal or illicit occupation of arable land does not create any rights; the agrarian authorities are therefore not obliged to compensate the illegal or illicit occupants of arable land qualifying for recovery for improvements to that land."

he occupied (2,777 hectares) and his ownership of 2,716 hectares was acknowledged. FEDECAMARAS informed the mission that Mr Garmendia has not received compensation for the recovery of his land.

19. As regards the estates of the employer officials Mr Egildo Luján and Mr Vicente Brito, the authorities reported that there is no information on file regarding any land recovery in respect of the mentioned names. FEDECAMARAS reported that the Government continues to disregard the recommendations of the Committee on Freedom of Association requesting it to restore the farm Las Misiones to Mr Vicente Brito and pay him fair compensation.

New information regarding the recovery, occupation and expropriation of land

20. Furthermore, FEDECAMARAS informed the mission of new cases (ten) of land recovery, occupation and expropriation (in relation to various expropriations, it alleges that neither the procedure established by the Act on expropriations, nor the payment of the evaluated property price was observed; other cases concern threats of expropriation of the land belonging to Mr Vicente Brito). In general, FEDECAMARAS informed the mission that the employer officials affected by recovery proceedings on their land hold valid ownership rights over those lands and that the criteria used to determine whether land is idle allow the State broad discretion.

Allegations regarding the expropriation of enterprises

21. The authorities and in particular the Office of the Attorney-General of the Republic reported that in cases affecting the general interest, the Council of Ministers can issue an expropriation decision explaining the public interests served by the expropriation. The Counsel-General's Office is responsible for enforcing the decision, firstly by exhausting all conciliatory remedies and, where necessary, by referring the matter to the courts. They indicated that in recent years 46 expropriations have been carried out and that these expropriations did respect the employers' and workers' freedom of association. The authorities referred to various cases of expropriation following collective disputes in enterprises where the employer had refused to enter into collective bargaining and to reach agreements.

22. As regards some of the specific cases contained in Case No. 2254, the authorities reported the following: (1) Agroisleña SA: this expropriation did not violate any international standards and the enterprise is currently managed by an ad hoc board which respects the workers' collective rights; (2) Illinois: this case is the subject of international arbitration proceedings; (3) Orinoco iron and steel: the case is closed. The enterprise was sold following an agreement with the owners. It currently operates with 17,000 workers; and (4) Turbio iron and steel: the enterprise was declared of public utility following a labour dispute which brought the enterprise to a standstill for several months. No agreement was reached regarding its liabilities and an appeal is still pending in this regard. The national complainant organization referred to some of the cases within this case in the last allegations it submitted to the Committee on Freedom of Association, indicating that it would send further information in this regard.

739. *The Committee notes that in its communication of 15 May 2014 the Government states that there is no union persecution on expropriation of businesses which take place under expropriation proceedings for reasons of public interest and requests that the government does not continue consideration of this question.*

740. *The Committee takes note of the conclusions of the high-level tripartite mission with regard to the alleged recovery of land and expropriation of businesses [see the mission's report, paras 46–47]:*

46. The mission received numerous pieces of information relating to the cases mentioned in Case No. 2254 and took particular note of the authorities' statement to the effect that employers' and workers' organizations and their officials and members are not persecuted as a result of the policy for the recovery and expropriation of land. The mission notes that judicial and administrative proceedings are still ongoing in a number of cases;

while it draws attention to the delay in those proceedings, it firmly expects that they will be concluded in the near future. The mission also noted that, according to FEDECAMARAS, the criteria for determining the idleness of the land that is recovered give the State considerable discretion and that, contrary to the request made by the Committee on Freedom of Association, the employer officials have not been compensated. The Government informed the mission that a legal reform aimed at simplifying the criteria for determining the productivity of land was under examination. Furthermore, the mission noted with concern the information on new acts of recovery, occupation and expropriation of properties belonging to an employer official of FEDECAMARAS.

47. The mission highlights the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land, or other mechanisms that affect the right to own property, and trusts that the bill to amend the law governing land announced by the Government will be the subject of full consultations with representative workers' and employers' organizations and that it will be adopted in the near future.

741. The Committee notes with concern the recent information from the Government indicating that it is not intended, contrary to what is stated in the report of the mission, to reform the Law on Land and Agrarian Development; it also notes the Government's request that the Committee does not pursue the examination of allegations concerning the confiscation of estate insofar as the land policy and agrarian development is not a matter to be discussed by the Committee and that these cases did not give rise to any violation of freedom of association or to acts of anti-union persecution.
742. The Committee reiterates recommendations (e) and (f) of its previous examination of the case, calling for those leaders or former leaders of FEDECAMARAS to be fairly compensated. At the same time, the Committee refers to the decision of the Governing Body of March 2014, which "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners". The report of the high-level mission also refers to "the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises (including the new information communicated to the mission) and other related problems arising or that may arise in the future". The Committee requests the Government to implement that request and to report thereon.
743. Furthermore, the Committee, like the mission, notes with concern information received concerning new acts of recovery, occupation and expropriation applied to the property of an employers' leader of FEDECAMARAS. The Committee considers that acts of recovery (confiscation) and occupation of property of leaders of employers' or workers' organizations are contrary to freedom of association if they are taken as a consequence of their activities as representatives of such organizations.
744. Finally, the Committee emphasizes, as did the high-level tripartite mission, "the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land, or other mechanisms that affect the right to own property".

**Recommendation (g) of the previous examination
of the case regarding the lack of social dialogue
and tripartite consultations**

745. *The Committee regrets to note, from the report of the high-level tripartite mission, that the Tripartite Commission on minimum wages, which had existed under the previous labour legislation, has been abolished under the new legislation (the LOTTT).*
746. *The Committee notes the new allegations made by the IOE and FEDECAMARAS dated 28 August 2013, in which they state that the Government, again ignoring the Committee's recommendations, has continued to issue regulations with significant impact on both private Venezuelan companies and their workers without proper tripartite consultation and social dialogue, in particular without including FEDECAMARAS as the most representative employers' organization in the country.*
747. *The complainant organizations reject the Government's argument about an alleged opting-out of social dialogue and provide ample evidence of calls for social dialogue on the part of FEDECAMARAS, and emphasize that it is not enough to hold round tables for dialogue with businessmen in certain case to deal with specific issues. The complainant organizations refer more specifically to two regulations adopted without consultation with FEDECAMARAS:*
- (a) Resolution No. 8248 of 12 April 2013, issued by the People's Ministry of Labour and Social Security, which regulates the National Register of Workers' and Employers' Organizations
748. *According to the complainants, the resolution develops the LOTTT and was, like the referred Act, adopted, despite its importance, without consultations with FEDECAMARAS and under an Enabling Act that excluded its passage by the Legislative Assembly. The regulation subjects the registration of organizations to the discretion of the Ministry of Labour, whose refusal to register a organization disenfranchises that organization from appearing as a legitimate partner at the level at which it was established; the only legitimate organizations are those that appears to have the greatest number of members; also under the LOTTT, membership lists must be provided; all of this poses problems for the employer seeking to know its partner and creates legal uncertainty.*
- (b) Partial regulation on working time relating to the Decree with the rank, power and force of the Organic Act on Labour and Workers, published on 30 April 2013
749. *The complainant organizations point out that this regulation was not the subject of consultations with FEDECAMARAS and poses a threat to business productivity and has led to very significant disadvantages and practical difficulties for companies, which is extensively discussed in the complaint.*
750. *The Committee notes that in its response the Government states, with regard to Resolution No. 8248 on the registration of organizations, that the Register of Trade Unions has existed legally since the Labour Act of 1928 and that the main change is that now the record is unique and has a national character, not like before when there were records in the various states, which often precluded the collection of complete information; according to the Government, the requirements for the composition of the record have not changed; in addition, the Government indicates that this national record is the most objective mechanism for establishing the representativeness of such organizations, as has been urged by the ILO bodies, and stresses that this does not represent interference by the*

Government nor does it violate Convention No. 87; it is rather an objective, verifiable, secure and transparent system.

751. *The Committee notes from the Government's statements that the decree on working time, which develops the LOTTT and came into force on 30 April 2013, has not generated any type of conflict and the Special Plan of Inspections has found 90 per cent compliance with the regulation, with some problems existing only in specific areas such as commerce.*
752. *The Committee notes that the Government has not denied the lack of consultations with FEDECAMARAS on Resolution No. 8248 of 12 April 2013 dealing with the registration of organizations and issued by the People's Ministry for Labour and Social Security, or on the decree regarding the regulation on the working time, which went into effect on 30 April 2012. The Committee also notes that these were, however, regulations that affect the interests of businesses and employers' and workers' organizations. The Committee has drawn the attention of governments to the importance of prior consultation of employers' and workers' organizations before the adoption of any legislation in the field of labour law [see **Digest**, op. cit., para. 1073]. The Committee considers that in order to conduct a review, in accordance with the Conventions dealing with the freedom of association, of all of the elements of the resolution on the registration of organizations, it would require information on the practical implementation of that resolution, but stresses the importance of the fact that the legislation should establish mechanisms to ensure the confidentiality of union membership.*
753. *The Committee takes note of the summaries of the interviews conducted by the high-level tripartite mission (paras 23–27, 33–35 and 39 on social dialogue).*
754. *The Committee notes that the Government's representatives described to the mission the principles of an inclusive dialogue, that there have been numerous contacts and meetings between the authorities and sectoral chambers of FEDECAMARAS, that they were willing to work to further improve the dialogue with the employers' and workers' organizations and that the Government did not exclude the possibility of availing itself of technical cooperation programmes if necessary; however, the dialogue should be transparent and honest and must be based on respect and mutual recognition [see the mission's report, paragraph 39]; the Government's representatives also complained that FEDECAMARAS and the employers' organizations do not provide membership data to the labour authorities.*
755. *The Committee wishes to reproduce the mission's conclusions with regard to social dialogue [see paras 48–54 of the mission report]:*

Social dialogue

The mission notes that FEDECAMARAS continues to state that there are serious deficiencies in terms of social dialogue and that it is not consulted except on rare occasions and in relation to minimum wage fixing, when it is not given sufficient time to reply. The mission also notes that FEDECAMARAS and the Government concur that some associations that are members of FEDECAMARAS are consulted on occasion.

The mission notes that the Government continues to state that, within the framework of the Constitution of the Bolivarian Republic of Venezuela of 1999, it engages in "inclusive dialogue" on a massive scale. The mission also notes that the Government continues to make frequent references to the coup d'état of 2002 and to the involvement of representatives of FEDECAMARAS therein, who it considers should make a public apology for their actions. Moreover, the mission took note of the Government's statement to the effect that it was prepared to work to continue improving dialogue with workers' and employers' organizations, provided that the dialogue is based on respect and mutual recognition and that it takes place within the framework of the Constitution of the Bolivarian Republic of Venezuela. In view of the time that has elapsed and the change in the leadership of

FEDECAMARAS, as well as its statements of respect for the Constitution, the mission considers that social dialogue should be established with this organization.

In this regard, the mission states that it is logical for FEDECAMARAS, as an institution that has member associations in every region of the country and in the 14 most important production and business sectors of the Venezuelan economy (agriculture, banking, trade, construction, energy, industry, social media, mining, livestock, insurance, telecommunications, transport, tourism and property), to be consulted on the drafting of all legislation concerning industrial relations and on economic or social measures that affect its members. In this regard, the mission noted that, for example, FEDECAMARAS is not represented on the Higher Labour Council while FEDEINDUSTRIA is, which constitutes discrimination against FEDECAMARAS.

The mission highlights the fact that the trade union organizations also expressed their commitment to tripartite social dialogue and their willingness to be consulted on matters relating to labour legislation and to social and economic matters.

In this regard, the mission recalls the importance of creating the conditions necessary for initiating tripartite social dialogue with the most representative employers' and workers' organizations on matters relating to industrial relations, which requires a constructive spirit, good faith, mutual respect and respect for the freedom of association and independence of the parties, in-depth discussions over a reasonable period, and efforts to find, as far as possible, shared solutions that will, to a certain extent, attenuate the polarization afflicting Venezuelan society. The mission highlights that the inclusive dialogue recommended by the Constitution of the Bolivarian Republic of Venezuela is fully compatible with the existence of tripartite social dialogue bodies and that any negative experience of tripartism in the past should not compromise the application of ILO Conventions concerning freedom of association, collective bargaining and social dialogue, or undermine the contribution made by tripartism in all ILO member States.

In keeping with the conclusions of the Committee on Freedom of Association, the mission reminded the Government that it can avail itself of the technical assistance of the International Labour Office, not only in matters concerning social dialogue and structured bodies, but also in the adoption of criteria and procedures to measure the representativeness of workers' and employers' organizations. The mission noted that the Government made a general statement to the effect that it does not rule out the possibility of availing itself of technical cooperation programmes, if necessary. The mission considers that the Government needs to convey its willingness to do so in more specific terms. In keeping with the concern expressed above, the mission strongly invites the Government to consider the following recommendations.

Technical cooperation

Recalling, in keeping with the views expressed by the Committee on Freedom of Association, the need for and the importance of establishing structured bodies for tripartite social dialogue in the country and noting that no tangible progress has been made in that regard, the mission considers it essential for immediate action to be taken to build a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The mission considers that it is necessary for the Government to devise a plan of action that includes stages and specific time frames for its implementation, and which provides for:

- (1) The establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises (including the new information communicated to the mission) and other related problems arising or that may arise in the future.
- (2) The establishment of a tripartite dialogue round table, with the participation of the ILO, that is presided over by an independent chairperson who has the trust of all the sectors, that duly respects the representativeness of employers' and workers' organizations in its composition, that meets periodically to deal with all matters relating to industrial relations decided upon by the parties, and that includes the holding of consultations on new legislation to be adopted concerning labour, social or economic matters (including within the framework of the Enabling Act) among its main objectives. The criteria used

to determine the representativeness of workers' and employers' organizations must be based on objective procedures that fully respect the principles set out by the ILO. Therefore, the mission believes that it is important for the Government to be able to avail itself of the technical assistance of the ILO to that end.

- (3) *The discussion of laws, bills, other regulations and socio-economic policy at the tripartite dialogue round table, with a view to bringing domestic legislation into conformity with the Conventions concerning freedom of association and collective bargaining ratified by the Bolivarian Republic of Venezuela.*
- (4) *The identification of the causes of the problems related to administrative and judicial proceedings that affect workers' and employers' organizations and their representatives, with a view to finding solutions that will settle all matters pending in Case No. 2254.*

756. *The Committee notes that, in its communication of 15 May 2014, the Government states that it recently convened all stakeholders in the country at a national conference on peace and dialogue in economic matters in which FEDECAMARAS is involved. The Committee welcomes this information. The Committee notes that the Governing Body, at its session in March 2014, took note of the report of the high-level tripartite mission and "urged the Government ... to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners; and requested the Director-General to provide the required assistance to that end".*

757. *The Committee notes that the Government states that, in accordance with the recommendations made by the Governing Body in March 2014, a consultation process is under way with the trade unions, chambers and professional associations, land committees, rural committees, local councils and other peoples' organizations in the development and content of the action plan for the establishment of forums for dialogue, all in full compliance with the legal and constitutional structure of the Republic Bolivarian Republic of Venezuela; moreover, the consultation also includes themes for which the Government could seek ILO technical cooperation; the ILO will be informed once the consultations with various relevant organizations are concluded, however, it should be noted that: (1) a dialogue round table to address the recovery of land is not viable under the Act land and Agrarian development; (2) a tripartite dialogue round table cannot be mandated to conduct consultations on laws. It could however be a consulted in so far as the Constitution of the Bolivarian Republic of Venezuela is very clear about competencies related to the consultation, the adoption or the exemption of laws; discussion on laws and bills is the responsibility of the National Assembly; similarly, the socio-economic policy of the country lays under the jurisdiction of the National Executive power, in coordination with authorities of the State without limiting the mechanisms for dialogue and consultation that already exist in the country and are implemented with the various sectors concerned. Consultations may be made, among other bodies, under a tripartite round table but this cannot be a supra-constitutional body. The Committee stresses the importance of rapid compliance with the decisions of the Governing Body. The Committee regrets the Government's statements that a dialogue forum on land recovery (including in cases where land has been allocated to employers' leaders or former leaders) is not feasible and concerning the establishment of structured bodies for tripartite social dialogue in the country, and that the Government has not provided yet any plan of action, in consultation with the social partners, that sets stages and specific time frames for its implementation, to be carried out in consultation with the national social partners, nor has the Government turned to the ILO in order to request technical assistance.*

758. *The Committee recalls that the mission's conclusions also refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson.*

759. *The Committee urges the Government to implement without delay the conclusions of the high-level tripartite mission, which were ratified by the Governing Body, and expresses the firm hope that it will in the very near future take all steps necessary to do so and report thereon. Finally, the Committee, bearing in mind the conclusions of the high-level tripartite mission, stresses the importance that immediate action be taken to create a climate of trust based on respect for business and labour organizations, so as to promote stable and solid industrial relations. The Committee requests the Government to inform it of any measures in this regard.*
760. *The Committee requests the Government, as a first step in the right direction that should not pose a problem, to enable a representative of FEDECAMARAS to be appointed to the Higher Labour Council.*

The Committee's recommendations

761. *In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *While expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of carrying out an economic war, the occupation and looting of stores, the seizure of FEDECAMARAS headquarters, etc., the Committee wishes to point out to the Government the importance of strong measures to avoid such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, ratified by the Bolivarian Republic of Venezuela. The Committee once again draws the Government's attention to the fundamental principle that the rights of workers and employers can develop only in a climate free from violence, intimidation and fear, as such insecure situations are incompatible with the requirements of Convention No. 87. The Committee requests the Government to ensure respect for this principle.*
 - (b) *The Committee regrets that the criminal proceedings relating to the bombing of the headquarters of FEDECAMARAS on 26 February 2008 and the kidnapping and maltreatment in 2010 of the leaders of that organization, Noel Alvarez, Luis Villegas, Ernesto Villamil and Ms Albis Muñoz (the latter was wounded by three bullets) have not yet been completed, expresses the firm hope that they will be concluded in the very near future and requests the Government to keep it informed. The Committee reiterates the importance of ensuring that the perpetrators of those crimes are sentenced in a manner commensurate with the severity of the crimes, so that such crimes are not repeated, and that FEDECAMARAS and the leaders concerned are compensated by the damage caused by these illegal acts.*
 - (c) *As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of employers' leaders or former leaders, the Committee reiterates recommendations (e) and (f) of its previous examination of the case, requesting that those leaders or former leaders of FEDECAMARAS be compensated in a just manner. At the same*

time, the Committee refers to the decision of the Governing Body in March 2014, in which it “urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners”, which involved, as mentioned by the mission, “the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to recovery of estates and the expropriation of enterprises (including the new information communicated to the mission) and other related problems arising or that may arise in the future” and regrets that in its last communication the Government stated that a dialogue round table on questions of recovery of estates is not viable. The Committee urges the Government to implement this request and to report thereon. Furthermore, the Committee, as did the mission, notes with concern the information provided about new acts of recovery, occupation and expropriation of the property of an employers’ leader of FEDECAMARAS. Finally, like the high-level tripartite mission, the Committee emphasizes “the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property”.

- (d) *In relation to the structured bodies for bipartite and tripartite social dialogue which need to be established in the country, and the plan of action in consultation with the social partners, together with the elaboration of specific steps and concrete time frames for its implementation, and counting upon the technical assistance of the ILO recommended by the Governing Body, the Committee notes that the Government indicates that it has initiated a process of consultation with different sectors. It requests the Government to ensure that FEDECAMARAS is included in all these processes. The Committee recalls that the mission in its conclusions referred to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table with the participation of the ILO and an independent chairperson. Noting with regret that the Government has not yet provided a plan of action, the Committee urges the Government to implement without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and expresses the firm hope that it will take, in the very near future, all steps necessary to do so and will report thereon.*
- (e) *Finally, the Committee, guided by the conclusions of the high-level tripartite mission, stresses the importance of immediate action being taken to create a climate of trust based on the respect of business and labour organizations, so as to promote stable and solid industrial relations. The Committee requests the Government to inform it of any measures in this regard. The Committee requests the Government as a first step in the right direction to enable a representative of FEDECAMARAS to be appointed to the Higher Labour Council.*
- (f) *The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.*

Appendix

**Decision of the Governing Body (27 March 2014)
on the eighth item on the agenda: Report
of the high-level tripartite mission to
the Bolivarian Republic of Venezuela
(Caracas, 27–31 January 2014)**

The Governing Body:

- (a) took note of the information contained in the report of the high-level tripartite mission to the Bolivarian Republic of Venezuela (27–31 January 2014) (document GB.320/INS/8) and thanked the mission for its work;
- (b) urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners; and requested the Director-General to provide the required assistance to that end;
- (c) submitted the report of the high-level tripartite mission to the Committee on Freedom of Association for its consideration in the framework of the next examination of Case No. 2254 at its meeting in May–June 2014.

Geneva, 2 June 2014

(Signed) Professor Paul van der Heijden
Chairperson

<i>Points for decision:</i>	Paragraph 58	Paragraph 296
	Paragraph 79	Paragraph 307
	Paragraph 98	Paragraph 317
	Paragraph 109	Paragraph 327
	Paragraph 124	Paragraph 375
	Paragraph 156	Paragraph 433
	Paragraph 173	Paragraph 473
	Paragraph 183	Paragraph 497
	Paragraph 193	Paragraph 507
	Paragraph 207	Paragraph 534
	Paragraph 230	Paragraph 574
	Paragraph 245	Paragraph 618
	Paragraph 263	Paragraph 651
	Paragraph 285	Paragraph 761