



Governing Body

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Institutional Section

INS

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EIGHTEENTH ITEM ON THE AGENDA

Reports of the Officers of the Governing Body

First report: Complaint concerning non-observance by the Republic of Chile of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Maternity Protection Convention (Revised), 1952 (No. 103), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151), made under article 26 of the ILO Constitution by a delegate to the 105th Session (2016) of the International Labour Conference

1. At the 105th Session of the International Labour Conference, Ms Mildred Oliphant, President of the Conference, received a communication dated 13 June 2016, signed by a Workers' delegate, Mr Arellano Choque (Peru). The communication contained a complaint against the Government of the Republic of Chile under article 26 of the ILO Constitution for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Maternity Protection Convention (Revised), 1952 (No. 103), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151). The text of the complaint is attached in the appendix.
2. In a plenary sitting of that session of the Conference, the Workers' delegate of Peru provided information on the complaint. The President of the Conference took note of the complaint and stated that it would be referred to the Officers of the Governing Body.

3. Article 26 of the ILO Constitution reads as follows:

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of articles 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

4. The complaint refers to Conventions ratified by and in force for Chile. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Maternity Protection Convention (Revised), 1952 (No. 103), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151), were ratified by Chile on 1 February 1999, 1 February 1999, 14 October 1994, 13 September 1999 and 17 July 2000 respectively (these Conventions have therefore been in force in the country since 1 February 2000, 1 February 2000, 14 October 1995, 13 September 2000 and 17 July 2001 respectively).

5. On the date on which the complaint was filed, the signatory was a delegate at the 105th Session of the Conference. Therefore, under article 26(4) of the ILO Constitution, the delegate was entitled to file a complaint if he was not satisfied that the Republic of Chile had adopted measures to secure the effective observance of these five Conventions.

6. In light of the above, the Officers consider that the complaint is receivable in accordance with article 26 of the ILO Constitution and, without entering into the substance of the complaint, have agreed to refer the matter to the Governing Body.

7. At this stage of the procedure, the merits of the complaint cannot be discussed in the Governing Body. If a Commission of Inquiry is appointed (a decision which the Governing Body may take in accordance with article 26(4) of the Constitution), the Governing Body will be requested to take measures only after the Commission of Inquiry has reported on the merits of the complaint. In accordance with established practice, when the Governing Body appoints a Commission of Inquiry, the relevant matters before the various ILO supervisory bodies are referred to this Commission. Until a Commission of Inquiry is appointed, the supervisory bodies remain competent to consider the matters raised.

8. The matters raised in this complaint have not yet been examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to the Conventions referred to in the complaint.

9. In accordance with article 26(5) of the Constitution, since the Government of the Republic of Chile is not already represented on the Governing Body, it shall be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration.
10. *Taking into account that the conditions established in article 26 of the ILO Constitution appear to be fulfilled, the Officers of the Governing Body consider that the complaint is receivable and recommend that the Governing Body decide:*
- (a) to request to the Director-General to forward the complaint to the Government of Chile, inviting it to communicate its observations on the complaint by 10 January 2017; and*
 - (b) to include this item on the agenda of its 329th Session (March 2017).*

Appendix

*World Federation of Trade Unions
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Geneva, 8 June 2016

Ms Mildred Oliphant, President, 105th Session, International Labour Conference
Ms Corinne Vargha, Director, International Labour Standards Department
Officers of the Governing Body, International Labour Office

Ladies and gentlemen,

I, the undersigned, *Nazario Arellano Choque*, Workers' delegate of the Republic of Peru to the 105th Session of the International Labour Conference, supported by the World Federation of Trade Unions (WFTU), represented by its Deputy General Secretary, Valentín Pacho, member of the Workers' delegation of Peru to the 105th Session of the International Labour Conference, hereby submit a representation under article 26(4) of the ILO Constitution against the Government of Chile and request the appointment of a Commission of Inquiry for Chile into the serious and repeated violations committed by the Government of Chile in relation to: **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); the Workers' Representatives Convention, 1971 (No. 135); and the Maternity Protection Convention (Revised), 1952 (No. 103)**, all of which have been ratified by the Government of Chile.

Despite various appeals made by the ILO supervisory bodies, the Government of Chile continues to violate the fundamental Conventions referred to above. It persists in failing in its obligations to incorporate their content in the Constitution and in the legislation and to apply the Conventions in practice.

In view of this situation, which is extremely detrimental to the organized workers of Chile in both the public and private sectors, and in an attempt to put an end to all the violations arising from the domestic legislation and from non-observance in practice by the administrative and judicial bodies, the Chilean organizations affiliated and allied to the WFTU, as well as other organizations in Chile, have requested successive governments to ensure the full application of the ratified Conventions, but so far this has not happened. Consequently, we submit our representation to the ILO in search of more robust decisions from the supervisory bodies because of the Government of Chile's failure to observe both the Conventions and the previous decisions of the supervisory bodies.

As the ILO is already aware, since it has been asking the Government of Chile for years to repeal or amend legal provisions which are not in line with the ratified Conventions, the Government persists in its legislation in discriminating against branch or inter-enterprise unions, those in the construction sector and those representing casual or

temporary workers. Even though workers can establish unions, these are exposed to discrimination in practice since they are not allowed to engage in bargaining in most cases. That right remains at the discretion of the employers, which means that these unions and their members depend on the employer's willingness to be able to bargain collectively.

Since the employer can refuse to engage in collective bargaining, the workers are totally deprived of any defence or protection and do not have the right to strike. This opens the way for persecution of trade union members by the employer, which in turn undermines the trade unions since the workers see that their union is unable to engage in collective bargaining in practice.

The regulations established in the Labour Code are backed up by the administrative body, the Labour Directorate, which has stipulated that, for the protection and rights established by the Labour Code in relation to collective bargaining to apply, the employer must first agree to collective bargaining; if the employer does not agree, the protection and rights do not exist. The same applies to the federations and confederations, which must first obtain the respective employers' consent to engage in collective bargaining, and this violates Article 3 of Convention No. 87 and Article 4 of Convention No. 98.

It is the employer that decides whether or not the branch or inter-enterprise union, or the union of construction or temporary workers, can engage in collective bargaining. According to Labour Directorate Directive No. 1489 of 26 March 2010, if the employer agrees, the union may engage in bargaining; if the employer does not agree, the branch or inter-enterprise union, construction union or any other cannot bargain or enjoy the protection afforded by the Labour Code with respect to collective bargaining (trade union immunity; right to strike); this occurs in the first, second or third round of bargaining. The end of the aforementioned directive states that the fact of the employer having agreed on one occasion to bargaining with the inter-enterprise union leading to a collective agreement is not enough; to renegotiate the collective agreement in future, the employer must again give consent on the second or third occasion. For each round of bargaining, if the employer indicates that it does not wish to engage in collective bargaining with the trade union, the collective agreement is terminated.

Consequently, there is the massive contradiction that a branch or inter-enterprise union may have negotiated as an inter-enterprise union with an enterprise and signed a collective agreement and, when the latter expires and it is time for renegotiation, the employer may refuse to engage in bargaining and the workers immediately lose all the rights covered by that process. They would only be able to bargain as a group, as if they were not members of the branch union, as well as doing it with the maximum quorum, without any connection with the union. This situation occurs whenever the union upholds the collective agreement or the labour regulations in force, as in the case of the National Inter-Enterprise Union of Workers in the Metallurgy, Communications, Energy and Allied Industries (registration No. RSU 13.01.2411), whose collective agreements with the enterprises concerned expired because DirecTV, an American multinational TV corporation, refused to negotiate with the trade union in December 2015, with the result that workers left the union en masse, some sending their resignations to the union and others to the enterprise. A similar situation occurred with the Escapes Mendoza enterprise, which had a collective agreement with the same union for three periods but then refused to renegotiate it. Nothing more could be done, and the enterprise engaged in countless anti-union practices aimed at undermining the union structure.

The same thing is happening with the courts, which we consider to be using various ploys to avoid recognizing the validity of the Conventions on freedom of association in their rulings. The case of anti-union practices referred to above at Escapes Mendoza is highly significant. The union reported the above anti-union practices to the Labour Directorate, which verified each of the union's complaints and referred them to the courts,

but the courts refused to impose any penalties on the enterprise for these violations of the principles of freedom of association.

The above situation persists even though the Government of Chile has ratified ILO Conventions Nos 87 and 98 and despite the fact that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) [Committee of Experts] has urged the Government of Chile to bring its domestic legislation into line with the Conventions and the principles of freedom of association. It should be recalled that, since 2001, the ILO supervisory bodies have drawn the attention of successive Chilean governments to the fact that the national legislation is not in line with the ratified Conventions on freedom of association. Nevertheless, the same violations and failure to act on the observations made persist 16 years later.

The National Inter-Enterprise Union of Workers in the Metallurgy, Communications, Energy and Allied Industries (registration No. RSU 13.01.2411), a legally active branch trade union, was refused the right to represent its members in collective bargaining.

The same situation occurred at various enterprises – ECM Ingeniería SA; Maestranza Américo Vesputio SA; Industrias Ceresita SA; Escapes Mendoza SA; Construcciones y Servicios Siglo Verde SA; and DirecTV – on the grounds that the employer could choose whether or not to bargain with a branch (inter-enterprise) union, in accordance with article 334bis A, or that it was impossible under the law for such a union to be party to bargaining alongside an enterprise union.

The trade union complained to the administrative authority that the regulations concerned are invalid because they are not in line with the ILO Conventions on freedom of association. The administrative authority upheld the position of the employers denying the unions' right to engage in collective bargaining on behalf of their members as established in the international Conventions. Further to the rejection by the administrative authority, the trade union filed a complaint with the courts. The courts in turn rejected the complaint, upholding the employers' arguments. In this way they disregarded Conventions Nos 87, 98 and 135.

In other cases brought before the courts concerning the replacement of striking workers and the right to collective bargaining, rulings have been handed down which have violated the ILO Conventions (Appendix No. 1).

Not only the right to collective bargaining but also the right to strike is restricted, especially in the case of public sector workers. However, there are also serious limitations in the private sector, as previously indicated in the representation made in 2010, in which the labour inspectorates, on the instructions of the National Labour Directorate, are unconstitutionally granting to employers the right to accept or refuse negotiations with specific unions, federations or confederations, thereby violating the principles of freedom of association.

According to the Labour Directorate, the only unions that always have the right and capacity to negotiate and the right to approve strike action are enterprise unions, workplace unions or groups of workers from the enterprise. Even where other unions exist in the enterprises concerned, they depend on the wishes of the employers as regards collective bargaining and exercising their rights, including the right to strike.

Nor is the right to strike effectively respected in the legislation. Article 381 of the Labour Code contains a series of violations of the principles of freedom of association in authorizing the replacement of striking workers, including through the recruitment of strike-breakers.

The wording of article 381 is misleading and unclear. On the one hand, it states that the replacement of striking workers shall be forbidden. But then, after a comma, it states:

“unless the last offer made, in due form and with the notice indicated in the third paragraph of article 372, proposes at least:

- (a) equal terms to those contained in the contract ...;*
- (b) a minimum annual adjustment ...;*
- (c) a replacement bonus, equivalent to four index-linked units of account (UF) for each worker hired as a replacement ...”*

In the end, the right to strike amounts to nothing more than an empty declaration.

The right to strike is restricted not just in essential services, in areas that are sensitive in terms of personal safety, but for all workers. This is a disguised general ban on the right to strike. Obviously, if workers are aware that their employer is allowed to hire strike-breakers to replace them while they are on strike, they know that the strike will have no practical effect, since the enterprise or service will continue to operate normally; hence this is a disincentive to collective bargaining or union membership. At the same time, it is an incentive for the employer not to seek an agreement, either cutting ties with the union by not negotiating, or provoking a fruitless strike. The labour reform submitted to Parliament in 2014 changed the legislation but the replacement legislation introduced two new limitations: the obligation on trade unions to provide the enterprise with a number of workers to act as an emergency team in all collective bargaining; and the option for the enterprise to make changes in staff at the enterprise in the event of a strike. This is an incentive for the enterprise to hire staff during the bargaining period and then use them as strike-breakers during the strike, an action which is not explicitly considered to be an anti-union practice.

Furthermore, the courts have stated in their latest rulings that no replacements can be made by workers who are not union members at the time of the strike. In other words, all that has to be done is to hire workers prior to the strike in order to replace those who go on strike. The practice of hiring new workers in the period prior to the negotiations or during the negotiations to replace strikers was already fairly common in the past, and this is accentuated by the court rulings. This situation is absolutely contrary to the principles of freedom of association and the jurisprudence of the Committee on Freedom of Association.

The fact that the courts in Chile are upholding the illegal replacement of striking workers is an extremely serious matter. It legalizes violations of workers' fundamental human rights, it makes the situation unmanageable in encouraging the recruitment of strike-breakers by the employers before the final bargaining process or the strike. Above all, it obstructs the very bargaining process while it is taking place. This completely undermines the right to organize and to bargain collectively and is therefore completely contrary to Article 4 of Convention No. 98, which has been ratified by Chile.

With the court rulings, combined with the terms of article 381 of the Labour Code and the opinions of the Labour Directorate, the employer always has the possibility of using strike-breakers to replace workers who are legitimately exercising the right to strike. On some occasions the employer is authorized by law to hire replacements from the first day onwards subject to payment of US\$150, in other cases this occurs 15 or 30 days after the start of the strike, but in all cases replacements occur.

Further to the court rulings concerning replacement where the conditions established by article 381 were not met, in other words where no bonus or “adjustment” was offered, the employers still hired strike-breakers. The courts state that this is not a situation of illegal replacement because the workers replacing the strikers were already employed. Hence there is no penalty and replacement incurs no costs. This was the case in 2010 at Cerámica Espejo and other enterprises, where nothing happened to the employer. The same situation occurred in 2012 in the strike of workers at the Construcciones y Servicios Siglo Verde SA enterprise and in other cases, as we will demonstrate with the documentation of court judgments and rulings.

In practice employers will always have the possibility of hiring strike-breakers and these are starting to operate from the first day onward, violating the principles of freedom of association, Convention No. 87 and the Chilean Constitution (articles 5 and 19(26)). The situation remains unchanged and nobody stops these violations, with the employers adopting increasingly aggressive practices.

The right to strike is totally obstructed and rendered inoperative in practice. Although the legislation of Chile prohibits replacement in very general terms, it allows it if certain conditions are met. In general, employers can replace striking workers with total impunity.

Violation by the Labour Directorate of the Conventions on freedom of association

Further to the ratification by Chile of **Conventions Nos 87, 98, 135 and 151**, the Labour Directorate, in its work of interpretation in recent years, has issued various opinions and directives that seriously violate the principles of freedom of association. Rather than creating the conditions for problem-free collective bargaining, it is creating more and more obstacles to such a possibility, not only through the opinions that it issues under the powers conferred by article 331 of the Labour Code, but also in cases where it defines the scope of interpretation of the Labour Code without taking account of the fact that the Conventions on freedom of association are already in force in the country. Attached to the present communication are nine directives of the Labour Directorate and a decision of the labour inspectorate which clearly demonstrate how collective bargaining is being obstructed and how the Conventions ratified by Chile are being violated.

1. Directive No. 1489 of 26 March 2010;
2. Directive No. 1091 of 24 November 2009 of the Santiago Norte Chacabuco Inspectorate;
3. Decision No. 11 of 18 April 2011 of the Santiago Norte Chacabuco Inspectorate;
4. Directive No. 1607/99 of 28 May 2002 concerning bargaining with inter-enterprise unions (this directive violates the principles of freedom of association);
5. Directive No. 1197/61 of 11 April 2002 establishing criteria for the replacement of workers during a strike;
6. Directive No. 0545/33 of 2 February 2004 fixing penalties for failure to respond to observations of the employer;
7. Directive No. 4665/186 of 5 November 2003 issuing an opinion on inter-enterprise bargaining;
8. Directive No. 3861/140 of 16 September 2003 concerning refusal of protection and strike rights to members of an inter-enterprise union;
9. Directive No. 5241/241 of 3 December 2003 obliging members of an inter-enterprise union to sign bargaining lists;

10. Directive No. 1131 of 10 March 2010 rejecting the inclusion of a trade union in the collective bargaining process.

The contents of the attached directives and decisions clearly demonstrate how the international Conventions on freedom of association are being violated by the Government, in this case the Labour Directorate, in Chile (Appendix No. 2).

Violations by the Labour Minister

Perhaps the most serious aspect of all is the conduct of the authorities of the country with regard to freedom of association. The disregard shown by the previous Labour Minister, Ms Evelyn Matthei, for the legal provisions relating to freedom of association is extremely shocking. On 3 August 2012, in the city of Ancud in the Tenth Region, in the company of the National Labour Director, Ms Maria Cecilia Sánchez, and other public officials and in the presence of a group of trade union leaders and workers of the salmon industry and representatives of the employers' organization Salmón Chile, in response to the statement of the Puerto Montt Fishing Industry Workers' Federation president, Mr Ricardo Casas Mayorga, that clandestine unions still existed in the salmon industry in which only the leaders knew each other, being unable to reveal who their members are for fear of reprisals (dismissals), the Minister, Ms Matthei, took the microphone and asked whether the "clandestine" unions referred to by the trade union leader were enterprise or inter-enterprise unions.

On hearing the reply that both were involved, she said: "We are prepared to work with enterprise unions but inter-enterprise unions are a scam with only one purpose: to allow their leaders to make deals on privileges."

She thus levelled a serious accusation against the leaders of inter-enterprise unions, making it clear that she dislikes branch or inter-enterprise unions and expressing clear discrimination against them, on an occasion when salmon industry employer leaders and trade union leaders were gathered. If the Minister displays such conduct towards branch unions, nothing better can be expected from the employers.

Violations of the Conventions in Chilean domestic legislation

The Labour Code and other national laws contain various provisions that are in total contradiction with the standards of the ILO and the principles of freedom of association. The WFTU Coordinating Committee in Chile has forwarded proposals to amend or repeal provisions of the Labour Code and other internal regulations which are attached to the present communication (Appendix No. 3).

The ILO supervisory bodies have sent the Government of Chile a series of observations concerning the Conventions on freedom of association but little or nothing has been achieved.

While the supervisory bodies continue to insist with their observations, repeatedly asking for the repeal or amendment of provisions of the Labour Code, the Penal Code, the Internal State Security Act, the Civil Servant Associations Act and provisions of the Chilean Constitution itself which contravene the Conventions, successive governments have offered various excuses faced with the requests of the supervisory bodies. But this is ultimately a failure to act in response to the recommendations of the ILO supervisory bodies and of the Governing Body. In other words, little or nothing is being done by successive Chilean governments to change the situation. *The violations continue.*

It is high time to put an end to years of systematic violations and to establish appropriate mechanisms to stop the violations of freedom of association and of indigenous peoples' rights.

Labour reform of 2014

In December 2014, the Government presented proposals for labour reform, with the stated objective of ensuring harmony with the ILO Conventions which Chile had ratified, especially Convention No. 87.

After a process lasting nearly a year and a half, Parliament approved the reform in April 2016. Regrettably the stated objective was not achieved; on the contrary, the reform ultimately made the situation of thousands of workers worse by introducing a series of provisions that undermine inalienable rights, such as the eight-hour working day, maximum periods for the payment of wages and "standby" working days. With regard to trade unions, the quorum for organizing trade unions in enterprises of fewer than 50 workers, was increased from 8 workers to 50 per cent of the workforce.

With regard to collective bargaining, there is the new requirement that the quorum for the formation of trade unions must always be achieved for entitlement to collective bargaining. Negotiations cannot go ahead if this requirement is not met at the time; in other words, this obstructs bargaining even further, contrary to the terms of Article 4 of Convention No. 98.

Still with regard to collective bargaining, a provision on "necessary adjustments" was introduced, which in practice legalizes the replacement of workers on strike. The situation could have been rectified through the latest rulings on the subject issued by the Supreme Court. This provision runs counter to the rulings that recognize workers' effective right to strike, in accordance with the international treaties ratified by Chile.

This provision legalizes replacement in a disguised form, since it does not define as anti-union action the fact that the enterprise makes changes regarding shifts and workers during a strike at the enterprise or that new workers are hired during the bargaining process. This retrograde step marks a return to the era of dictatorship when it was possible to hire new workers during or before the collective bargaining period, who then did the jobs of strikers during the strike. This provision is in clear conflict with the ILO Conventions which Chile has ratified.

Another standard which is totally inconsistent with the international treaties ratified by Chile is the one that obliges all trade unions to provide the enterprise with staff during the strike (so-called "emergency teams"), including in enterprises which are not involved in essential sectors or services.

Lastly, a provision was adopted which legalizes the recruitment of strike-breakers in the event of a strike by the workers of a contracting company. In such a case, the parent company can recruit the strikers since they are entitled to continue working even though a strike is taking place.

Problems relating to the right to strike persist in Chile as a result of the new legislation. Even though previous restrictions have been eliminated, and the possibility was removed for the employer to hire strike-breakers on payment of UF4 per worker, these two new scenarios have now been introduced which in practice make strike action impossible, impractical or a right in theory only.

A third limitation on the right to strike which persists and is made more damaging by the reform is the possibility for striking workers to abandon strike action after six or 15 days, as the case may be. This facilitates anti-union practices in enterprises, which can

pressurize striking workers with the threat of dismissal at the end of the protection period, fixed at 30 days after the end of the strike, if they do not abandon the strike.

This current situation represents a serious restriction of freedom of association in Chile since many workers are indeed dismissed at the end of the protection period and both the administrative and judicial authorities consider such action by the employers to be legitimate.

Another legislative provision which causes complications for freedom of association is the one which empowers the courts to terminate a strike.

A reform which was supposed to eliminate the violations that had persisted in the legislation for years in relation to the international treaties ratified by Chile has ended up with new standards that in turn violate those ratified treaties and now also the Vienna Convention on the Law of Treaties.

Even worse, some standards that brought the legislation into line with the ILO Conventions have ultimately been debased. For example, the right to engage in bargaining was granted to branch or inter-enterprise unions but in the end only union leaders working at the enterprise are permitted to negotiate on behalf of the union. The paradox thus arises in many negotiations – in addition to other constraints – that the union president cannot participate in the collective bargaining over which he presides with the enterprise where union members are involved.

On the other hand, inter-enterprise unions cannot negotiate on behalf of their members in small enterprises, where it is the employer who decides whether or not to negotiate with the union. This has been described by the Committee of Experts as a violation of the ratified Conventions.

Worse still, two provisions that implied real improvements to the legislation on the right to organize and collective bargaining – namely, a trade union's entitlement to engage in collective bargaining and to extend the benefits thereof to its new members who did not participate in the bargaining process – were declared to be unconstitutional by the Constitutional Court (Appendix No. 4).

Here there is clearly a conflict between, on the one hand, the Constitutional Court and the Government of Chile and, on the other, the international community and the obligations of ILO member States and those deriving from the Vienna Convention to observe the terms of ratified instruments.

The Constitutional Court of Chile refuses to accept the ILO Committee of Experts' interpretation of a trade union's entitlement to bargain and when groups of workers can engage in collective bargaining. Indeed the Constitutional Court affirms that the ILO Collective Agreements Recommendation, 1951 (No. 91), and the Committee of Experts' interpretation are not applicable, and in fact one of the issues raised by the ILO with regard to Chile is precisely the egalitarian treatment given by the legislation to trade unions and groups of workers. For years the Committee of Experts' interpretation has therefore been that collective bargaining rights are the prerogative of trade unions, whereas the Constitutional Court declares that entitlement to be unconstitutional precisely because it considers that there can be no discrimination towards groups of workers, because in the Chilean Constitution the right to engage in collective bargaining belongs to the workers, not to the unions.

The issue under discussion now concerns the whole international community, including the International Court of Justice, since the action of the Constitutional Court of Chile calls into question the validity and force of treaties in countries that have ratified them. The Chilean Parliament approved a reform, including of provisions aimed at harmonizing the national legislation, especially concerning unions' collective bargaining rights, with the international treaties ratified by Chile, but the Constitutional Court rejected

Parliament's approval and declared those provisions to be unconstitutional. We cannot overlook the fact that in 2014 the ILO itself drew the attention of the Government of Chile to this precise matter, and asked the Government to repeal the provisions that gave groups of workers the same collective bargaining rights as trade unions, in violation of Convention No. 98.

I, the undersigned, Nazario Arellano Choque, Workers' delegate of the Republic of Peru to the 105th Session of the International Labour Conference, supported by the World Federation of Trade Unions (WFTU), represented by its Deputy General Secretary, Valentín Pacho, member of the Workers' delegation of Peru to the 105th Session of the International Labour Conference, whose signatures appear at the end of this paragraph, responding to the express request of the trade unions and allied organizations of Chile, which have been victims of serious and repeated violations of the rights established in ILO Conventions Nos 87, 98, 135, 151 and 103 ratified by the Government of Chile, submit this representation under article 26 of the ILO Constitution against the Government of Chile, request the appointment of a Commission Of Inquiry for Chile, and request that procedures are set in motion by the ILO to appoint the said Commission of Inquiry.

(Signed) Workers' delegate,
Republic of Peru

(Signed) Deputy General Secretary,
World Federation of Trade Unions (WFTU)