INTERNATIONAL LABOUR OFFICE

Governing Body

320th Session, Geneva, 13–27 March 2014

GB.320/INS/12

Institutional Section

INS

TWELFTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

371st Report of the Committee on Freedom of Association

Contents

	Paragraphs
Introduction	1–133
Case No. 2979 (Argentina): Report in which the Committee requests to be kept informed of developments	
Complaint against the Government of Argentina presented by the General Confederation of Labour of the Republic of Argentina (CGTRA)	134–153
The Committee's conclusions	149–152
The Committee's recommendations	153
Case No. 2987 (Argentina): Interim report	
Complaint against the Government of Argentina presented by the Trade Union Association of Subway and Light Rail Workers (AGTSyP) and the Confederation of Workers of Argentina (CTA)	154–170
The Committee's conclusions	165–169
The Committee's recommendations	170
Case No. 2882 (Bahrain): Interim report	
Complaint against the Government of Bahrain presented by the International Trade Union Confederation (ITUC) and the General Federation of Bahrain Trade Unions (GFBTU)	171–194
The Committee's conclusions	186–193
The Committee's recommendations	194

This GB document is printed in limited numbers to minimize the environmental impact of the ILO's activities and processes, contribute to climate neutrality and improve efficiency. GB members and observers are kindly requested to bring their copies to meetings and to avoid asking for additional ones. All GB documents are available on the Internet at www.ilo.org.

Case No. 3001 (Plurinational State of Bolivia): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of the Plurinational State of Bolivia presented by the Trade Union Confederation of Construction Workers of Bolivia (CSTCB) 195–212

The Committee's conclusions 207–211

The Committee's recommendations 212

Case No. 2655 (Cambodia): Interim report

Complaint against the Government of Cambodia presented by Building and Wood Workers' International (BWI) 213–221

The Committee's conclusions 217–220

The Committee's recommendations 221

Case No. 2963 (Chile): Definitive report

Complaint against the Government of Chile presented by the National Federation of the Unions of Supervisors, List A, and Professionals of the Enterprise CODELCO (FESUC) 222–238

The Committee's conclusions 232–237

The Committee's recommendations 238

Case No. 2620 (Republic of Korea): Interim report

Complaints against the Government of the Republic of Korea presented by the Korean Confederation of Trade Unions (KCTU) and the International Trade Union Confederation (ITUC) 239–255

The Committee's conclusions 246–254

The Committee's recommendations 255

Case No. 2992 (Costa Rica): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Costa Rica presented by the Asociación de Profesores de Segunda Enseñanza (APSE) 256–269

The Committee's conclusions 264–268

The Committee's recommendation 269

Case No. 2908 (El Salvador): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of El Salvador presented by the Union of Workers of the Garments Company Gama (STECG) and supported by the Federation of Unions of Workers in El Salvador (FESTES) 270–294

The Committee's conclusions 287–293

The Committee's recommendations 294

Case No. 2928 (Ecuador): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Ecuador presented by the General Union of Workers of Ecuador (UGTE) 295–316

The Committee's conclusions 306–315

The Committee's recommendations 316

Case No. 2947 (Spain): Report in which the Committee requests to be kept informed of developments

Complaints against the Government of Spain presented by the Trade Union Confederation of Workers' Committees (CC.OO.), the General Union of Workers (UGT), the Independent Central Workers' Union and Union of Civil Servants (CSIF), the Workers' Trade Union (USO) and many other national trade unions 317–465

The Committee's conclusions 436–464

The Committee's recommendations 465

Appendix I. Act No. 3/2012 of 6 July 2012 on urgent measures for labour market reform [excerpts]

Appendix II. Act No. 20/2013 of 13 July 2012 [excerpts]

Case No. 2516 (Ethiopia): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Ethiopia presented by the Ethiopian Teachers' Association (ETA), Education International (EI) and the International Trade Union Confederation (ITUC) 466–481

The Committee's conclusions 475–480

The Committee's recommendations 481

Appendix. Joint Statement on the Working Visit of the ILO Mission to Ethiopia

Case No. 2749 (France): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of France presented by the Martinique Democratic Workers' Confederation (Centrale démocratique martiniquaise des travailleurs – CDMT) and CDMT–Postes 482–522

The Committee's conclusions 509–521

The Committee's recommendations 522

Case No. 2203 (Guatemala): Interim report

Complaint against the Government of Guatemala presented by the Trade Union of Workers of Guatemala (UNSITRAGUA) and the Guatemalan Trade Union, Indigenous and Campesino Movement (MSICG) 523–537

The Committee's conclusions 529–536

The Committee's recommendations 537

Case No. 2913 (Guinea): Definitive report

Complaint against the Government of Guinea presented by the International Trade Union Confederation (ITUC) 538–549

The Committee's conclusions 546–548

The Committee's recommendation 549

Case No. 2508 (Islamic Republic of Iran): Interim report

Complaint against the Government of the Islamic Republic of Iran presented by the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF) 550–569

The Committee's conclusions 564–568

The Committee's recommendations 569

Case No. 2807 (Islamic Republic of Iran): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of the Islamic Republic of Iran presented by the International Trade Union Confederation (ITUC) 570–579

The Committee's conclusions 574–578

The Committee's recommendation 579

Case No. 2953 (Italy): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Italy presented by the Italian General Confederation of Labour (CGIL) 580–626

The Committee's conclusions 612–625

The Committee's recommendations 626

Case No. 3031 (Panama): Definitive report

Complaint against the Government of Panama presented by the National Union of Education Workers (SINTE) 627–639

The Committee's conclusions 635–638

The Committee's recommendation 639

Case No. 2937 (Paraguay): Interim report

Complaint against the Government of Paraguay presented by the Single Confederation of Workers (CUT), the Union of Workers of the enterprise Itaipú Binacional-Lado Paraguayo (STEIBI), the Union of Drivers and Services of the Alto Paraná (SICONAP/S) and the Union of Workers of Itaipú Binacional (SITRAIBI) 640–654

The Committee's conclusions 649–653

The Committee's recommendation 654

Case No. 3010 (Paraguay): Interim report

Complaint against the Government of Paraguay presented by UNI Global Union and the Trade Union of Workers and Employees of Prosegur Paraguay, SA (SITEPROPASA) 655–669

The Committee's conclusions 662–668

The Committee's recommendations 669

Case No. 2982 (Peru): Interim report

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP), the Federation of Civil Construction Workers of Peru (FTCCP) and the Confederation of Workers of Peru (CTP) 670–704

The Committee's conclusions 697–703

The Committee's recommendations 704

Case No. 2998 (Peru): Interim report

Complaint against the Government of Peru presented by the Confederation of Workers of Peru (CTP) and the National Federation of Workers of the National Programme for Direct Support to the Most Needy (the Juntos Programme) (FENATRAJUNTOS) 705–732

The Committee's conclusions 725–731

The Committee's recommendations 732

Case No. 2999 (Peru): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Peru presented by the Central Mixed Trade Union of Workers in Enterprises providing services to ESSALUD (SMCUTSERVICES) 733–743

The Committee's conclusions 741–742

The Committee's recommendation 743

Case No. 3033 (Peru): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Peru presented by the Single Trade Union of Workers of Casa Grande and Allied Enterprises (SUTCGA), supported by the Federation of Workers of the Peruvian Revolution (CTRP) 744–765

The Committee's conclusions 759–764

The Committee's recommendation 765

Case No. 3037 (Philippines): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of the Philippines presented by the Trade Union Congress of the Philippines (TUCP) 766–813

The Committee's conclusions 805–812

The Committee's recommendation 813

Case No. 2988 (Qatar): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Qatar presented by the International Trade Union Confederation (ITUC) 814–862

The Committee's conclusions 837–861

The Committee's recommendations 862

Case No. 2713 (Democratic Republic of the Congo): 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 National Union of Teachers in Registered Schools (SYNECAT) 863–887

The Committee's conclusions 872–886

The Committee's recommendations 887

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

Case No. 2797 (Democratic Republic of the Congo): 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 Trade Union Confederation of Congo (CSC), the National Workers' Union of Congo (UNTC), the United Workers' Organization of Congo (OTUC), the Democratic Confederation of Workers (CDT), SOLIDARITÉ, the Conscience of Workers and Peasants (CTP), the Solidarity of Workers and Peasants (SOPA), ACTIONS, the Workers' Alliance of Congo (ATC), the New Union Dynamics (NDS) replaced by the General Confederation of Independent Unions (CGSA), the Kongo General Workers' Federation (FGTK) and the Union Power of Congo (FOSYCO) 888–901

The Committee's conclusions 894–900

The Committee's recommendations 901

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

Annex. Meeting with the National Inter-Union Association of the Congo (15 July 2013)

Case No. 2925 (Democratic Republic of the Congo): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Democratic Republic of the Congo presented by the Congolese Labour Confederation (CCT) 902–925

The Committee's conclusions 906–924

The Committee's recommendations 925

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

Case No. 2892 (Turkey): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Turkey presented by the Union of Judges and Public Prosecutors (YARGI-SEN) 926–936

The Committee's conclusions 933–935

The Committee's recommendations 936

Case No. 3016 (Bolivarian Republic of Venezuela): Interim report

Complaint against the Government of the Bolivarian Republic of Venezuela presented by the Union of Workers of the Ministry of Science and Technology (SITRAMCT) and the National Alliance of Cement Workers (ANTRACEM) 937–972

The Committee's conclusions 963–971

The Committee's recommendations 972

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 13, 14 March 2014, under the chairmanship of Professor Paul van der Heijden.

2. The members of Argentinean and French nationality were not present during the examination of the cases relating to Argentina (Cases Nos 2979 and 2987) and France (Case No. 2749).

* * *

3. Currently, there are 146 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 32 cases on the merits, reaching definitive conclusions in 21 cases and interim conclusions in 11 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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

4. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2508 (Islamic Republic of Iran) and 2982 (Peru), 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: Cambodia (Case No. 2655) and Paraguay (Cases Nos 2937 and 3010).

Urgent appeals

6. As regards Cases Nos 2708 (Guatemala), 2765 (Bangladesh), 2786 (Dominican Republic), 2871 (El Salvador), 2896 (El Salvador), 2917 (Bolivarian Republic of Venezuela), 2923 (El Salvador), 2948 (Guatemala), 2967 (Guatemala), 2968 (Bolivarian Republic of Venezuela), 2978 (Guatemala), 2989 (Guatemala), 3007 (El Salvador), 3008 (El Salvador), 3013 (El Salvador), 3018 (Pakistan), 3019 (Paraguay) and 3021 (Turkey), 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: 3046 (Argentina), 3047 (Republic of Korea), 3048 (Panama), 3049 (Panama), 3051 (Japan), 3052 (Mauritius), 3053 (Chile), 3054 (El Salvador), 3055 (Panama), 3056 (Peru), 3057 (Canada), 3059 (Bolivarian Republic of Venezuela), 3060 (Mexico), 3061 (Colombia), 3062 (Guatemala) and 3063 (Colombia), 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: 2177 (Japan), 2183 (Japan), 2318 (Cambodia), 2723 (Fiji), 2726 (Argentina), 2794 (Kiribati), 2902 (Pakistan), 2949 (Swaziland), 2955 (Bolivarian Republic of Venezuela), 2957 (El Salvador), 2997 (Argentina), 3023 (Switzerland), 3026 (Peru), 3027 (Colombia), 3030 (Mali), 3035 (Guatemala), 3036 (Bolivarian Republic of Venezuela), 3040 (Guatemala), 3041 (Cameroon), 3042 (Guatemala) and 3044 (Croatia).

Partial information received from governments

9. In Cases Nos 2265 (Switzerland), 2609 (Guatemala), 2648 (Paraguay), 2673 (Guatemala), 2715 (Democratic Republic of the Congo), 2743 (Argentina), 2761 (Colombia), 2811 (Guatemala), 2817 (Argentina), 2824 (Colombia), 2830 (Colombia), 2889 (Pakistan), 2893 (El Salvador), 2897 (El Salvador), 2927 (Guatemala), 2929 (Costa Rica), 2962 (India), 2970 (Ecuador), 2994 (Tunisia), 2995 (Colombia), 2996 (Peru), 3003 (Canada), 3009 (Peru), 3011 (Turkey), 3012 (El Salvador), 3014 (Montenegro), 3017 (Chile), 3039 (Denmark), 3043 (Peru), 3050 (Indonesia) and 3058 (Djibouti), 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 2254 (Bolivarian Republic of Venezuela), 2445 (Guatemala), 2684 (Ecuador), 2753 (Djibouti), 2869 (Guatemala), 2924 (Colombia), 2941 (Peru), 2946 (Colombia), 2954 (Colombia), 2958 (Colombia), 2986 (El Salvador), 2990 (Honduras), 3000 (Chile), 3002 (Plurinational State of Bolivia), 3004 (Chad), 3005 (Chile), 3015 (Canada), 3016 (Bolivarian Republic of Venezuela), 3020 (Colombia), 3022 (Thailand), 3024 (Morocco), 3025 (Egypt), 3029 (Plurinational State of Bolivia), 3032 (Honduras), 3033 (Peru), 3034 (Colombia), 3038 (Norway) and 3045 (Nicaragua), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Article 26 complaint

11. The Committee notes that a direct contacts mission visited Belarus from 27 to 31 January 2014 and requests the Government 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.

Withdrawal of a complaint

12. By a communication dated 5 December 2013, the General Trade Union of Petroleum Workers has indicated that all issues raised in its complaint against the Government of Egypt (Case No. 3028) have been resolved and therefore requests its withdrawal. The Committee notes this information with interest.

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: Chile (Case No. 2963) and Turkey (Case No. 2892).

Impact, visibility and working methods

14. On regular occasions, the Committee carries out a review of its working methods, procedures, visibility and impact. During the Governing Body term from 2008 to 2011, the Committee drew several conclusions in this regard which are set out in its 360th Report, paragraphs 11–19. The Committee continued these discussions, as well as the monitoring of the impact of its previous decisions, and held separate sittings dedicated to this effect presided by the Committee's independent Chair (16 October 2013 and 14 March 2014).

Impact

15. There is a large measure of goodwill within the tripartite ILO constituency for the work of the Committee, and this is demonstrated by the considerable attention given by some governments to its requests for information and to dialogue on its conclusions and recommendations. Numerous cases of progress have been noted by the Committee (compiled most recently in its 360th Report, paragraphs 14, 18 and 19) and the Committee encourages governments and complainant organizations to draw its attention to the resolution of cases following its recommendations. Compliance with the fundamental principles and rights of freedom of association, which apply to all member States of the Organization, pave the way for ratification of the freedom of association Conventions by ILO member States.

16. However, the Committee remains highly concerned by a number of countries which have not responded to its urgent appeals and which have left the Committee to examine cases with only the benefit of the allegations. The Committee considered this to represent a significant failure to comply with its procedures to which all ILO member States have committed and stressed that this could result in obfuscating serious violations of freedom of association to the severe detriment of complainants. Moreover, in cases where enterprises have been named in the complaint, such a breakdown gives rise to unacceptable consequences, leaving those indirectly concerned with no means to provide their views. In cases of persistent failure to respond to complaints, the Committee has called upon the independent Chairperson to meet directly with Government representatives during the Governing Body or the International Labour Conference in order to express its serious concern, to ascertain the obstacles to their full cooperation and to offer the assistance of the Office. The Office also draws these cases to the attention of the field structure so that they can facilitate timely replies. On certain occasions the Office has sent a mission to the country to collect complete information on the issues raised and facilitate solutions where possible. More recently, the Committee has decided to highlight the cases that it was obliged to examine in the absence of a government reply in the introduction to its report.

All of these measures have assisted the Committee in carrying out its mandate more effectively.

Communication, visibility and knowledge sharing

17. The Committee welcomes the efforts made by the Office to issue timely public statements and press releases across global media outlets upon the issuance of its reports, highlighting the serious and urgent cases while also providing information on cases of progress. The Committee considers that its work should be more readily accessible from the ILO website and invites the Office to consider a portal directly into its procedures, the *Digest of decisions and principles of the Freedom of Association Committee*, reports and annual statistics on case treatment. Videos interviewing Committee members can assist in rendering the Committee's work more understandable to ILO constituents. Further work in training journalists on the Committee's work and its relevance to the region may also contribute to its impact on the ground. Together with these initiatives, ILO constituents can play a greater role at local levels in partnering in what should be a joint effort in promoting the work of the Committee and its principles. More generally, the Committee considers that the use of technology to assist its work, as well as its visibility, is an area of greater future potential.

Increasing workload and effective use of the Committee's procedures

18. The Committee first observes that the increased knowledge about the ILO throughout the world and the greater understanding of its special complaints procedures has given rise to a significant increase in the number of complaints that are brought before it. In pursuing its reflections on the use of its procedure in this respect and as regards other matters, the Committee, at the outset, considers it of utmost importance to highlight the principles that underpin the basis of all its work. The principles of universality and a fair and level playing field in the area of freedom of association can only be assured if access to the Committee's special complaints' mechanism is assured to all organizations of workers and employers. The *Digest of decisions and principles of the Freedom of Association Committee* plays an important guiding role in ensuring certainty and coherence, universality and a clear understanding of the fundamental principles and rights to freedom of association and the application of the Committee's mandate. The Committee has gained international esteem over the decades since its creation based on these vital principles, their relevance to the contemporary world of work, and their development by a specialized and impartial international body with tripartite composition. The impartial nature of the Committee is assured through the appointment of its members by the ILO Governing Body in their personal capacity and the confidential treatment of complaints.

19. There are three main elements, however, that lend themselves to a heightened effectiveness and efficiency of the Committee's work: (i) the significance, relevance and timeliness of the issues brought to its attention; (ii) the quality and clarity of its procedures and decisions; and (iii) the political will and capacity of the government to comply with these procedures and to implement its recommendations. In order to facilitate the preparation of complaints that meet the criteria in (i) above, the Committee has invited the Office to prepare a matrix of essential elements to be included so as to enable it to examine the complaint in full knowledge of all the relevant facts. Similar criteria should be set out for governments to facilitate their task to provide the most complete information to the Committee, including as regards the views of the employers' organizations concerned in cases relating to enterprises. As for (ii), the Committee has requested the Office to prepare a brochure explaining certain of its specific terms and describing its procedure in a step by step approach. The Committee is also making an effort to avoid unnecessary repetition in

its examination to ensure greater quality and clarity of its decisions. As for (iii), the Committee trusts that the Office will continue to give high priority to building the capacity of the social partners, and especially governments, to implement, promote and respect freedom of association principles and to carry out missions as appropriate to facilitate the implementation of its recommendations. More generally, regional seminars can assist all partners in proper and effective use of the Committee's procedures.

20. The Committee has observed that there were a number of complaints that had been submitted to it which were able to be resolved at the national level in the courts or in special national complaints mechanisms even prior to their being considered by the Committee. In this regard, the Committee wishes to recall the nuanced position it has carefully formulated over the years which both takes into account national judicial procedures while not subjecting complaints to a requirement of exhaustion of national remedies. Here the Committee refers the ILO constituents to paragraphs 28–30 of the procedure for the examination of complaints alleging violations of freedom of association. The Committee considers that the existence of independent, impartial and rapid appeal mechanisms can facilitate domestic solutions. The Committee would support the ILO's continuing assistance to governments in this regard.

21. As already raised in its 360th Report, the Committee once again supported the use and possible expansion of special national complaints' mechanisms for the review of alleged violations of freedom of association. The Office has assisted several governments in establishing tripartite dispute settlement mechanisms relating to freedom of association complaints. These mechanisms, which offer mediation and which are based on the acceptance and attendance of the parties involved, have given rise to solutions to the problems raised in formal complaints brought before the Committee or that were being contemplated. The Committee welcomed the information provided on the effective functioning of these mechanisms in accordance with its principles and encouraged the Office to continue to foster the further development of such mechanisms as appropriate. The Committee asks governments and social partners to keep the Committee informed on the effectiveness of these mechanisms.

22. Finally, the Committee highlighted that some cases may be resolved through the use of preliminary contacts missions described in paragraph 67 of its procedure and invited governments to consider recourse to this practice, especially in cases where it was felt that resolution could be achieved at an early stage.

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

Case No. 2382 (Cameroon)

23. The Committee last examined this case at its meeting in November 2011, in relation to anti-union harassment against the Secretary-General of the Single National Union of Teachers and Professors in the Teachers Training Faculty (SNUIPEN), Mr Joseph Ze, and interference by the authorities in an internal union dispute [see 362nd Report, paras 23–32].

24. The Committee notes the communications dated 19 November 2010, 23 May 2012 and 28 May 2013, which once again denounce the Government's refusal to give effect to the Committee's recommendations, and reiterates its previous observations, in particular regarding the harassment to which Mr Ze still appears to be subject.

25. The Committee notes the information contained in the Government's communications of 23 July 2012 and 3 January 2014. The Committee notes with concern that the Government merely reiterates its previous observations that the case concerning the judicial harassment and violation of Mr Ze's union rights by elements of the Yaoundé national police force in April 2004 comes under common law and that the relevant court decisions remain pending. Furthermore, the Government once again challenges the allegations of the authorities' interference in the affairs of the SNUIPEN.

26. As regards the inquiry conducted by the Secretary of State for Defence into the facts surrounding the arrest and custody of Mr Ze as of 16 April 2004, the Committee can only once again deplore the stance taken by the Government which simply states that the case comes under common law and that it has been referred to the judicial authorities. The Committee notes that, in its communication of May 2013, the complainant organization challenges the Government's statement and indicates that no ruling at the national level is pending, since there has never been any follow up to its complaint of 5 June 2004, submitted to the Secretary of State for Defence, for extortion of union funds. *The Committee can only reiterate its request to the Government to provide the results of any inquiry conducted by the Secretary of State for Defence, following the complaint by Mr Ze. The Committee recalls that, given the serious allegations of acts of torture and extortion of funds, this inquiry must determine the true facts and responsibilities, sanction the guilty parties, and above all prevent the repetition of such acts. If it is established that no inquiry had been conducted, the Committee expects the Government to take the necessary measures so that the inquiry is undertaken by the competent authorities, taking into account the information provided by the complainant organization and that the inquiry also relates to the allegations made by the SNUIPEN concerning the arrest of Mr Ze in March 2007 and March 2008, and his detention from 17 to 24 March 2008.*

27. As to the allegations concerning the suspension of Mr Ze's salary in November 2008 on the grounds of unlawful absence from his place of work, the Committee notes that, according to the complainant organization, the decision to reinstate Mr Ze's salary was signed with effect from November 2012, therefore assigning to him an absence of 48 months. The complainant organization denounces the possible consequences of such a decision concerning Mr Ze's financial situation and refers to the appeal for review lodged by Mr Ze to amend the date on which his salary was reinstated. *The Committee requests the Government or the complainant organization to keep it informed of the outcome of the appeal in question.*

28. Furthermore, the Committee again notes the Government's statement to the effect that it abstains from any interference in union activities. The Committee recalls the background to this case in which it had noted certain acts by the authorities favouring contact with a faction of the SNUIPEN. The Committee had requested the Government to maintain a stance of complete neutrality in the differences within the union movement, in particular within the SNUIPEN. The Committee notes that the complainant organization again denounces the interference by the Government which, in February 2012, summoned the faction of Mr Ateba, as a SNUIPEN representative, to a consultation meeting on the social climate among teachers, following which a Memorandum of Understanding was signed (Memorandum of Understanding and press release provided by the complainant organization). *Noting with concern that in this case the Government breached its duty of neutrality, the Committee is obliged once again to request the Government to indicate to what extent the issue of the lawful representation of the SNUIPEN has been clarified and, as appropriate, to provide any final court decision in this regard or any information on the means used by the parties concerned to settle the dispute.*

Case No. 2772 (Cameroon)

29. The Committee examined the substance of this case concerning anti-union discrimination against the Professional Trade Union of Train Drivers of Cameroon (SPCTC) by the Cameroon Railway Company (CAMRAIL) at its meeting in June 2011 [see 360th Report, paras 291–323]. On that occasion, the Committee requested the Government to obtain information from the company on the allegations, to indicate the current situation of the trade union in the company, particularly with regard to the deduction of the union dues of its members, the premises made available to it and its activities, and to inform it of the outcome of the complaint lodged against the company for the unjustified dismissal of seven members of the SPCTC.

30. The Committee notes that, in a communication dated 31 October 2013, the complainant organization, the General Union of Workers of Cameroon (UGTC), indicates that the Government has taken no action to give effect to the Committee's recommendations. It also indicates that only one of the seven union members dismissed by the company has obtained a ruling in their favour convicting the company to pay 22 million CFA francs in compensation (the High Court of Mfoundi and then the Court of Appeal of the Centre Region). The other six union members, who had filed the case with another court (the High Court of Wouri), had their dismissal confirmed on grounds of misconduct. The complainant denounces the different treatment of the union members, which changes according to the court.

31. The Committee notes the information provided by the Government on the action taken on its recommendations, which is contained in the communications dated 23 July 2012, 13 January 2013 and 3 January 2014. The Government indicates that it raised the matter of the deduction of the union dues of SPCTC members with the company, despite the latter's initial refusal to do so owing to administrative problems. The Government adds that the SPCTC does not have access to the premises intended for unions in the company as it did not take part in the last trade union elections, and therefore has no staff delegates in the company. Lastly, the Government indicates that the union members in question were dismissed on account of an illegal work stoppage, and not their activities, and that the appeals lodged are still before the courts.

32. *The Committee, having noted the court rulings concerning the seven SPCTC members dismissed for participating in a strike, requests the Government to indicate whether an appeal has been lodged against the rulings of the High Court of Wouri confirming the dismissal of six of the union members and, if so, to inform it of the outcome.*

33. *In general, the Committee notes with concern the lack of information from the Government on the practical measures taken to enable the SPCTC to carry out its activities without hindrance within CAMRAIL. The Committee is therefore bound to reiterate a number of its recommendations. The Committee urges the Government to provide information on any investigation conducted by the authorities into the allegations of anti-union discrimination contained in the communication of 9 October 2008 from the SPCTC to the Ministry of Labour and Social Security.*

34. *Moreover, the Committee, noting the Government's indication that it has raised the matter with the company with a view to it signing an agreement with the SPCTC authorizing the deduction of the union dues of its members, urges it to indicate any negotiations conducted or agreements concluded on this subject.*

35. *Lastly, the Committee notes the company's explanations for refusing to provide SPCTC representatives with premises and expects that the trade union will at least have access to*

the workplace of its members and that its representatives will be able to perform their functions in relation to its members without hindrance.

Case No. 2654 (Canada)

36. The Committee last examined this case, in which the complainants alleged that the Public Service Essential Services Act (PSESA) and the Trade Union Amendment Act (TUAA) in Saskatchewan impede workers from exercising their fundamental right to freedom of association by making it more difficult for them to join unions, engage in free collective bargaining and exercise their right to strike, at its March 2013 meeting [see 367th Report, paras 28–44]. On that occasion, the Committee requested the Government to keep it informed of the decision of the Court of Appeal concerning the appeal by the Government of the decision of the Court of Queen's Bench that the PSESA was unconstitutional and the appeal by the unions in relation to the court's finding on the constitutionality of the TUAA. The Committee also requested the Government to ensure that the provincial Government take concrete steps to review the PSESA and the TUAA, in full consultation with the social partners concerned, with a view to their amendment in line with its previous recommendations. Finally, it requested the Government and the complainants to provide information on any unfair labour practice applications which might have been filed in this regard, as well as on the results of these procedures.

37. In a communication dated 20 September 2013, submitted by the Government of Canada, the provincial Government states that since the Government's last update, the Saskatchewan Court of Appeal has heard arguments from the parties and on 26 April 2013 rendered a unanimous decision of the five Justices of the Court of Appeal that both PSESA and TUAA are constitutional. It further adds that since the decision of the Court, the Saskatchewan Federation of Labour has sought leave to appeal to the Supreme Court of Canada. At the time of writing, this application had not yet been considered.

38. The provincial Government also indicates that it released a consultation paper on 2 May 2013 which provided information on employment and labour relations issues and requested feedback and advice on changes to the 12 pieces of legislation for which the Ministry of Labour Relations and Workplace Safety is responsible. The Government specifies that the paper was not an exhaustive list of issues, but rather a starting point for a dialogue with interested parties. The decision to undertake this significant legislative review was predicated on the philosophy that Government has a responsibility for ensuring these laws remain current, responsive and relevant to the needs of the people of the province. Some of these 12 pieces of legislation had not been substantively reviewed since the early 1990s, while other pieces have not been reviewed since the 1950s. As a result, the Acts have become outdated and do not reflect today's work environment. The Government states that its goal was to modernize and simplify the legislation so it is easier to use and understand; to eliminate inconsistencies; to reduce confusion and to clarify which provisions apply in particular situations. As part of these consultations, the Government sought input from the various unions and employers as well as the general public.

39. The Government further underlines that this first round of consultations consisted of a 90-day period from 2 May to 31 July 2012. During this period, the Government received over 3,800 submissions from interested parties. According to the Government, this was a significant increase in participation of stakeholders and the general public on labour relations and employment-related legislation. The result of these consultations was the introduction of The Saskatchewan Employment Act (Bill 85) on 4 December 2012. With the introduction of Bill 85, the Government commenced a second consultation process that started on the day of introduction and concluded on 1 March 2013. These consultations resulted in 243 additional submissions which helped inform the Government of the unintended consequences of the legislation.

40. The Government also indicates that in addition to these two phases of consultations, additional dialogue with stakeholders occurred through the Minister's Advisory Committee on Labour Relations and Workplace Safety which consists of representatives of employers, organized labour and the public interest. From 2 May 2012 to 10 April 2013, the Committee met with the Minister and Government officials on 19 occasions to discuss the existing and proposed legislation. The Government adds that from the submissions received during the second consultation phase and the ongoing dialogue with the Minister's Advisory Committee the Government introduced 28 House Amendments to Bill 85. It states that the result was legislation that is fair to employees, employers and unions. The Government believes this consultation process has provided ample opportunity for all stakeholders to provide input which has, according to the Government, resulted in fair and balanced legislation.

41. *The Committee takes note of the information provided by the Government and of the Saskatchewan Court decision relevant to the issues in this case. It further notes the Government's indication that the Saskatchewan Federation of Labour has sought leave to appeal to the Supreme Court of Canada of the decision of the Court of Appeal for Saskatchewan rendered on 26 April 2013 that the PSESA and the TUAA were constitutionally valid. The Committee understands that the appeal of the Saskatchewan Federation of Labour has been granted and requests the Government to keep it informed of the decision of the Supreme Court of Canada in this regard, and of any action taken as a result, taking into account its recommendations concerning the amendments to be made to these Acts.*

42. *In the meantime, the Committee also takes note of the Government's indication that extensive consultations with the relevant social partners took place during the review of the 12 pieces of legislation for which the Ministry of Labour Relations and Workplace Safety is responsible and that the decision to undertake it was predicated on the philosophy that Government has a responsibility for ensuring these laws remain current, responsive and relevant to the needs of the people of the province. While taking due note of the extensive labour law review, the Committee observes from the draft provided that neither the PSESA nor the TUAA were amended in line with its recommendations given at its March 2010 meeting [see 356th Report, para. 384]. Therefore, the Committee once again requests the Government to ensure that the provincial Government take concrete steps to review the PSESA and the TUAA, in full consultation with the social partners concerned, with a view to their amendments in line with its previous recommendations.*

43. *In the absence of any information provided with respect to its recommendation on the establishment of appropriate appeal mechanisms concerning the complainants' allegations that a very large number of employees working in essential services have been unilaterally designated as "essential workers", the Committee once again urges the Government to ensure that the provincial Government takes appropriate measures, including through the establishment of appropriate appeal mechanisms which have the confidence of the parties concerned, in order to limit the designation of workers as "essential" to the strict minimum necessary to operate the essential services in case of work stoppage, particularly in respect of trade union officers, in order to ensure that the scope of the minimum service does not result in rendering the strike actions ineffective. The Committee further requests the Government once again to ensure that the provincial Government take steps, in consultation with the social partners concerned, to establish compensatory mechanisms, such as independent and impartial arbitration procedures that are binding on the parties concerned when they are unable to conclude a collective agreement.*

Case No. 1865 (Republic of Korea)

44. The Committee has been examining this case since its May–June 1996 meeting and on the last occasion at its March 2012 meeting [see 363rd Report, paras 42–133, approved by the Governing Body at its 310th Session]. On that occasion, the Committee recalled that the outstanding legislative issues in this case concerned, on the one hand, the Act on the Establishment and Operation of Public Officials' Labor Unions (AEOPOLU), which concerns the public sector only, and, on the other hand, the Trade Union and Labour Relations Adjustment Act (TULRAA) and other legislation which is generally applicable. The Committee observed a number of important amendments to the legislation, but also requested the Government to take a number of additional measures, including: to repeal the outstanding ban on payment of full-time union officers and to ensure that the overall determination of wage payment to full-time union officers would be left to free and voluntary negotiations between the parties, without legislative interference; to provide a copy of the adopted revised TULRAA and its enforcement decrees, as well as a copy of the Manual on the application of maximum time-off limits as soon as possible; and to indicate whether any sanctions have been taken against employers or unions for violations of the above provisions. The Committee further requested the Government to take all the necessary measures to ensure that for collective bargaining at the workplace: (i) when there is no union representing the required percentage to be designated on a representative body, collective bargaining rights are granted to all the unions in this unit, at least on behalf of their own members; (ii) minority trade unions that have been denied the right to negotiate collectively are permitted to perform their activities, to speak on behalf of their members and represent them in individual grievances; and (iii) to keep the Committee informed of pending cases of unfair labour practices upon the introduction of the unified bargaining channel system and to take measures for the prevention and sanctioning of any such acts. The Government was requested to provide full observations on the allegations of interference in the negotiations between unions and employers and to indicate the reasons for the unilateral termination of binding collective bargaining agreements that took place in several workplaces, including Korea Railroad, National Pension Service and Korea Gas Corporation. The Committee also requested the Government to take the necessary measures to ensure that strike action may be carried out beyond the limited question of industrial disputes for the signing of a collective agreement and that the establishment of minimum services be agreed in accordance with the principles of freedom of association to bring section 314 of the Penal Code (obstruction of business) into line with these principles, and to ensure that the legality of such action not be dependent upon the representative status of the organization. Finally, the Committee requested the Government to: repeal the provisions prohibiting dismissed and unemployed workers from keeping their union membership and making non-union members ineligible to stand for trade union office (sections 2(4)(d) and 23(1) of TULRAA) and as regards public employees, to take all possible measures with a view to achieving conciliation between the Government and the Korean Government Employees' Union (KGEU) so that the latter may continue to exist and ultimately to register; ensure that public officials working for the Election Commission and the courts have the right to form their own associations so as to defend their interests and that public officials' trade unions have the possibility to express their views publicly on the wider economic and social policy questions which have a direct impact on their members' interests, including during their meetings, in their publications and in the course of other trade union activities; and to keep it informed of the situation of the public employees who were dismissed or disciplined for participating in national rallies or for involvement in a union ballot on integration of the unions.

45. In its communication dated 30 January 2013, the Government indicates that the term "full-time union official" in the Republic of Korea differs significantly from the leadership of trade unions in other countries. The Government recalls that in the Republic of Korea, a full-time union official refers to an employee at a workplace who is exempted from the

obligation to work and performs only union-related duties. While in other countries, such officials are often paid from union dues, in the Republic of Korea, the practice is that the wages of full-time union officials are paid by the employer, thus placing a risk of the employer infringing on the autonomy of the union. The payment of wages to full-time union officials was prohibited through the revision of the TULRAA in 1997 but its implementation was delayed out of concern that its enforcement would weaken trade union activity. The intention was to progressively reduce the number of full-time union officials while the financial autonomy of trade unions was bolstered, yet over the years the opposite occurred and there was actually an increase in the number of full-time union officials. With the revision of the TULRAA on 1 January 2010, the ban that had been suspended for 13 years was implemented from July 2010. At the same time, the paid time-off system was introduced to allow employers to pay for the time necessary for union activities within certain limits. The persons eligible for paid time off are not limited to the union leadership and workers who are not union officials subject to paid time off may also freely carry out union activities if agreed under the collective agreements. The paid time off can be applied to almost all union activities, with the exception of certain activities, such as strikes. The payment of wages to a full-time union official is considered to be an unfair labour practice and it is the employer who is penalized, not the union official. Finally, the Government provides the requested Enforcement Decree and Manual and adds that other countries make the financial support of employers for union officials' wages an unfair labour practice.

46. As regards the bargaining representative system in the Republic of Korea, the Government explains that it is designed to ensure that a bargaining representative union must be selected once the process is under way for unifying the bargaining channel and that the system requires the organizing of a joint bargaining team even in the absence of a majority trade union. The Government also confirms that trade unions that do not have the representative function are guaranteed the right to perform individual trade union activities including speaking on behalf of their members and handling grievances.

47. *The Committee takes due note of the information provided by the Government with respect to the implementation of the amendments made to the TULRAA. While duly noting the explanations as to the historic context of paid full-time union officers in the Republic of Korea, the Committee is bound once again to reiterate that, even where the payment in such cases may come from the employer, the payment of full-time union officers should be a matter for negotiation between the parties. As regards the Government's concerns relating to the autonomy of the trade union in such circumstances, the Committee considers that, should it be found in a specific case that the employer is interfering in the internal affairs of the trade union by financing its members so as to bring it under the employer's domination or control, such action should be sanctioned on the basis of the evidence. The Committee trusts that the Government will soon be in a position to lift the ban and to ensure that no one is sanctioned for having entered into an agreement in this regard. In the meantime, the Committee requests the Government to provide detailed information on the manner in which the maximum time-off limits are applied in practice and any complaints of unfair labour practices received.*

48. As regards the freedom of association of public officials, the Government confirmed that public officials of Grade VI or lower in rank at the Election Commission and the courts are permitted to freely join unions according to the current Act and do not fall under special service public officers prohibited from joining trade unions. As regards the KGEU, the Government once again recalls that this organization no longer exists due to illegitimate activities and their refusal to legitimately register a trade union. The Government affirms that refusing to grant organizations that fail to fulfil all conditions required of a trade union for the protection entitled under the TULRAA is in conformity with both the rule against excessive restriction and the balance between legal interests. The minimum requirements

set out in the TULRAA and the AEOPOLU, as confirmed by the Constitutional Court, represent an inevitable and minimal measure to ensure the democratic and autonomous operation of trade unions. Given that the KGEU by-laws allow dismissed workers and managerial officials among its trade union members, the Government accordingly refused registration, a decision that was upheld at the Seoul Administrative Court and the Seoul High Court and is currently pending before the Supreme Court. As regards the allegations of anti-union discrimination against the KGEU, the Government indicates that, while it did recommend that public officials avoid attending a large-scale rally that could turn into a political rally, it did not ban participation in a registered and legitimate rally. In addition, while it requested the cooperation of all government institutions and agencies to prohibit access to the KGEU website during official service hours, it did not ban access to the site outside of the workplace, nor did it block the release of a KGEU statement. Finally, the Government states that public officials' trade unions are required to be politically impartial as their politicization would exert a significant influence on the fairness of duties and the trust of the people, but confirms that the KGEU's registration was not refused for this reason. The Government reaffirms the right of public officials' trade unions to express their views on economic and social policy issues that directly impact on their members' interests, but asserts that, in conformity with a Supreme Court decision in April 2012, the expression of political views related to a specific political power in order to exercise influence on the government's policy making process is prohibited. As regards the Democratic Labour Party case, the Government indicates that the court issued a penalty of 300,000–500,000 South Korean won per person for the act of providing funds and contributions towards party expenditures by public officials as a violation of the Political Fund Act.

49. In a communication dated 11 August 2013, the International Trade Union Confederation (ITUC) requested an urgent intervention and brought to the Committee's attention information concerning the Government's refusal, for the fourth time, to register the KGEU. The ITUC informed that the KGEU and the Government discussed intensively the measures that the union could take, concluding with a proposal from the KGEU to amend its constitution to insert the following clause in relation to membership, "according to the relevant laws and regulations". Nevertheless, the application for registration was once again denied on the basis that its constitution could still be interpreted to allow dismissed workers to retain membership. On 20 August 2013, the KGEU submitted details on the efforts made and the dialogue with the Ministry of Employment and Labour aimed at resolving this long outstanding issue which were regrettably, unsuccessful.

50. In a communication dated 4 October 2013, the Government explains that the matter of the registration of the KGEU should be determined in consideration of the unique characteristics of the Republic of Korea Constitution and labour laws. Given that the TULRAA bestows a number of rights, including the entitlement to collective bargaining, a registration system was necessary to determine which labour unions are legitimate so as to prevent unnecessary conflict. In addition, the AEOPOLU aims to guarantee trade union activities of public officials and therefore stipulates that public officials who are not in office (that is, have been removed, dismissed, or discharged) are not eligible to retain membership in a labour union. The KGEU's request for registration was denied because article 2 of its by-laws, as amended on 22 July 2013, provided that, in case a union member is dismissed or the effectiveness of his/her dismissal is in dispute, he/she may keep union membership according to related laws, with the proviso that determination of his/her eligibility to join the union depends on the central executive committee (article 27(2)(G)). The Government indicated that it rejected the registration request because the by-laws did not comply with the Republic of Korea Constitution or related laws and expressed its wish that the KGEU resubmit a request and that it conduct trade union activities in accordance with related laws.

51. In a communication dated 1 December 2013, the ITUC, Education International (EI), the Korean Confederation of Trade Unions (KCTU) and the Korean Teachers and Education Workers' Union (KTU) submitted new allegations of trade union rights violations affecting the KTU and the KGEU. In particular, the complainants refer to the Government's decertification of the KTU on 24 October 2013 because it did not amend its Constitution to ban dismissed and unemployed workers from its membership. The complainants recall that around 60 KTU members were dismissed during the previous Government for their activities, including expressing their opinion on the Government's education policy or for one-off donations to progressive political parties. While 39 were reinstated through court procedures, 21 teachers remained dismissed. In September 2013, the KTU decided to put the question of amending its by-laws to exclude dismissed teachers to a vote of its general membership. Almost 60,000 members voted across the nation with 68.59 per cent voting against, despite the Government's ultimatum that the union would be deregistered if its by-laws were not amended. The KTU requested an injunction for the suspension of the Government's decision to cancel its registration, which was accepted by the Seoul Administrative Court on 13 November 2013. The first ruling on the merits is expected within six months. In the meantime, the Government filed an immediate appeal against the injunction with the Seoul High Court. Moreover, according to the complainants, the Ministry of Education withdrew from the ongoing collective bargaining negotiation with the KTU in September 2013 on the ground that the legal status of the KTU would be challenged by the Ministry of Employment and Labour. The complainants also allege that the Government carried out a search and seizure of the KGEU servers and announced its intention to do the same to the KTU due to the alleged lack of political neutrality of these organizations. The complainants consider that these acts were undertaken with the sole intention of intimidating KGEU leaders and members and sending a clear message that the Government will take any and all steps necessary to prohibit the exercise of freedom of association of any union, particularly in the public sector, that opposes the anti-union policies of the Government.

52. In a communication dated 19 December 2013, the Government states that the right to organize of teachers is guaranteed by the Act on the Establishment and Operation of Trade Unions for Teachers (AEOTUT) enacted in July 1999 and which gave rise to the operation of 11 trade unions. Establishment of a trade union accords the right to collective bargaining and the possibility that a union request the settlement of a labour dispute by the Labour Relations Commission (LRC). In order to be granted these benefits and legal rights and protection, the Government follows procedures of confirming whether a trade union meets legal requirements in addition to confirming if members of the union are workers in need of bargaining for the improvement of their working conditions. The AEOTUT was enacted and is applied in consideration of the duty of teachers, keeping in mind the distinct characteristics of their status. Article 2 of the AEOTUT provides that, in order to be a member of a teacher's union, one must be a current teacher or a dismissed teacher who has made an application to remedy unfair labour practices to the LRC and who is awaiting the review decision. It has, however, been confirmed that the KTU's by-laws allow dismissed persons to be members and be involved in the union's activities. Since March 2010, the Government has urged and guided the KTU to rectify these violations and abide by the laws. On 12 January 2012, the Supreme Court decided that the corrective orders issued by the Government were legitimate. Nonetheless, as the KTU continued to violate the laws, the Government issued another corrective order on 23 September 2013 advising the KTU to correct its status. As the KTU decided to decline the corrective orders through a vote of all its members, the Government was obliged to give it notification of its loss of union status. The KTU can however restore its legal status at any time when the union voluntarily corrects its illegality by amending its by-laws and by excluding dismissed workers from the union. The Government concludes that any amendments to related laws should only be made after social consensus has been built among a wide range of stakeholder groups in the Republic of Korea.

53. *The Committee takes note with deep concern of the decertification of the KTU, the refusal to register the KGEU for the fourth time and the allegations relating to the searches and seizures of KGEU servers. As regards both the refusal to register the KGEU and the decertification of the KTU, the Committee recalls that it has consistently considered that a legislative provision prohibiting dismissed workers from being union members is contrary to the principles of freedom of association. The Committee has requested the Government to take the necessary measures to amend or repeal the provisions in the TULRAA to this effect ever since they were first enacted in 1997 and observes that the AEOTUT and the AEOPOLU contain similar provisions. The Committee deeply regrets not only that the KGEU has yet to obtain legal recognition due to this restriction, but moreover expresses its deep concern that the application of this restriction to teachers has now resulted in a governmental act to deregister the KTU whose registration in July 1999 had been hailed by the Committee as a significant development in ensuring freedom of association in the country. The Committee urges the Government to take the necessary measures to amend the provisions restricting trade union membership in this regard. Observing that the efforts made by the Ministry of Employment and Labour (MOEL) to find a solution to this important matter did not in the end bear fruit, the Committee urges the Government to pursue its efforts and to keep it informed of all steps taken to facilitate the registration of the KGEU and ensure the re-certification of the KTU without delay. As regards the pending court cases, the Committee firmly trusts that the principles of freedom of association it has enunciated over the years concerning the right of workers' and employers' organizations to draw up their Constitutions and rules without interference by the public authorities will be duly taken into account by the courts and that the legal recognition of a major trade union organization in the education sector will not be dissolved on the basis of the membership of a handful of dismissed teachers. Indeed, the Committee takes due note of the Government's emphasis on the importance of confirming if members of the union are workers in need of bargaining for the improvement of their working conditions and observes that nearly 60,000 teachers are expecting representation from the KTU on their behalf. While awaiting the court judgments on this matter, the Committee trusts that the Government will fully engage with the KTU, including on the collective bargaining negotiations which the complainant states were forestalled in September 2013. The Committee urges the Government to repeal the provisions in the TULRAA, the AEOTUT and the AEOPOLU which prohibits dismissal workers from being members of the trade union and to provide detailed information in reply to all the allegations set out in the 1 December 2013 communication. Finally, the Committee once again requests the Government to provide full observations on the previous allegations of interference in the negotiations between unions and employers and to indicate the reasons for the unilateral termination of binding collective bargaining agreements that took place at Korea Railroad, National Pension Service and Korea Gas Corporation and to indicate the steps taken to bring section 314 of the Penal Code into line with the principles of freedom of association.*

Case No. 2547 (United States)

54. The Committee last examined this case – which concerns a decision of the National Labor Relations Board (NLRB) denying graduate teaching and research assistants at private universities the right, under the National Labor Relations Act (NLRA), to engage in organizing or collective bargaining – at its March 2010 meeting [see 356th Report, paras 73–75]. On that occasion, the Committee requested the Government to keep it informed of progress made with regard to any further developments at the NLRB in relation to the freedom of association and collective bargaining rights of graduate teaching and research assistants, as well as any additional steps taken in the United States Congress as concerns the matter of the introduction of bills in the United States Congress to overrule the NLRB's decision by adding language to the definition of "employee" under the NLRA to include "a student enrolled at an institution of higher education … who is performing

work for remuneration at the direction of the institution, whether or not the work relates to the student's course of study".

55. In its communication of 11 October 2012, the Government indicates that as reported in the previous update, the issue central to the case, *Brown University*, 342 NLRB 483 (2004) *(Brown University)*, was being revisited. On 25 October 2010, the NLRB (or Board) reversed a regional director's dismissal of a petition filed by a local of the United Auto Workers seeking a representation election for 1,800 graduate teaching and research assistants at New York University, *New York University and GSOC/UAW*, 356 NLRB No. 7 (2010) *(New York University)*. The dismissal was based on the *Brown University* decision where the NLRB held that graduate student assistants at another university were not employees within the meaning of the NLRA (the Act). In reversing the Regional Director's dismissal, the Board stated that there were "compelling reasons for reconsideration of the decision in *Brown*", and remanded the case to the Regional Director for a hearing and development of a "full evidentiary record".

56. The Government adds that in a decision issued on 16 June 2011, Mr Elbert Tellem, then Acting Regional Director for NLRB Region 2, dismissed the petition on the ground that the unit sought is composed of graduate student assistants who, under the *Brown University* decision, are not treated as employees for purposes of collective bargaining under section 2(3) of the Act, *New York University and GSOC/UAW*, NLRB Acting Regional Director, Case No. 2-RC-23481 of 16 June 2011. However, the ruler wrote that the Board majority in *Brown University* was "premised on a university setting as it existed thirty years ago". With regard to the New York University graduate assistants, Mr Tellem noted that "the graduates have a dual relationship with the employer which does not necessarily preclude a finding of employee status". Additionally, the Government reports that Mr Tellem stated that "in the event the Board reconsiders the employee status of graduate students, it appears on this record that a unit including all graduate students would be appropriate".

57. The Government states that on 30 June 2011, the Petitioner in *New York University* filed a request for review urging the Board to overrule its decision in *Brown University*. The Employer filed an opposition to the petitioner's request for review on 14 July 2011. On 3 February 2012, a group of New York University teaching, research and graduate assistants travelled to Washington, DC, to deliver a letter to the NLRB requesting that the Board move quickly to reach a decision. On 22 June 2012, the Board granted review in *New York University* and in another similar matter, *Polytechnic Institute of New York University*, Case No. 29-RC-12054. The Board also invited the parties and interested *amici* to file briefs addressing four questions, including whether the Board should modify or overrule its decision in *Brown University*, which held that graduate student assistants who perform services at a university in connection with their studies are not statutory employees within the meaning of section 2(3) of the Act. Briefs were to be filed with the Board on or before 23 July 2012.

58. *The Committee takes note of this information. The Committee also notes that on 26 November 2013, a joint statement was published between New York University and the union United Automobile, Aerospace and Agricultural Implement Workers of America International Union (UAW), which concludes that both parties have mutually agreed to withdraw the NLRB proceedings and have reached a voluntary agreement in which they are committed to bargain in good faith for a contract upon confirmation of a majority vote by graduate employees for UAW representation in collective bargaining. The Committee welcomes this information. Noting, however, that the decision of the NLRB in Brown University still excludes graduate students from collective bargaining rights set out in the NLRA, the Committee requests the Government to continue to provide information on any additional steps taken or envisaged to ensure that graduate teaching and research*

assistants, in their capacity as workers, are not excluded from the protection of freedom of association and collective bargaining.

Case No. 2750 (France)

59. The Committee examined the substance of this case at its November 2011 meeting [see 362nd Report, paras 848–964]. The Committee recalls that the complaint presented by the Confédération générale du travail–Force ouvrière (CGT–FO) concerned the conformity of the provisions of the Act of 20 August 2008, to renew social democracy and to reform working hours and its implementing texts, with the provisions of Conventions Nos 87, 98 and 135, which France has ratified. In its recommendations, the Committee invited the Government, within the framework of the High Council for Social Dialogue (HCDS) set up for this purpose, to review the various points to which its attention had been drawn and to take appropriate steps where issues or obstacles affecting freedom of association and the right to collective bargaining were identified in the context of the application of the Act of 20 August 2008 and its implementing texts. It requested the Government to keep it informed of the conclusions drawn and opinions issued by the HCDS [see 362nd Report, para. 964].

60. In a communication dated 15 March 2013, the complainant organization deplores the fact that the Government has still not given effect to the Committee's conclusions on two particular points. These concern, on the one hand, the Committee's conclusions relating to the freedom to appoint the trade union delegate responsible for representing the trade union within the enterprise, particularly in the context of collective bargaining and, on the other hand, those relating to the appointment and the duration of the mandate of a union branch representative, in view of the right of trade union organizations to organize their administration and activities in accordance with Article 3 of Convention No. 87. As regards these two points, the complainant organization recalls that the Committee expressly invited the Government to examine, in consultation with the social partners, the possibility of amending the legislation in the light of the principles recalled on that occasion. The complainant organization indicates that it raised the matter with the Government on several occasions (December 2011, June 2012 and February 2013) regarding the Committee's conclusions. The CGT–FO regrets that, to date, the Government has merely referred to an evaluation of the implementation of the Act of 20 August 2008, which is to be carried out during the second half of 2013.

61. Furthermore the complainant organization regrets that the Court of Cassation, in a decision dated 20 June 2012, confirmed the judgment of the court of first instance (judgment of 20 May 2011 of the Metz city court) that denies a trade union the freedom to appoint its trade union delegate. In this case, the court denied the right of a trade union to appoint one of its members on the grounds that the member failed to meet the criteria set out in the Act (having stood as a candidate in occupational elections that were open to all workers and not only to members of the trade union), finding that the denial of that right did not constitute "arbitrary interference in the functioning of the trade union" or violate "any prerogative that is inherent in freedom of association". Recalling the Committee's conclusions on this subject [see 362nd Report, paras 947 and 952], the complainant organization considers that the situation calls for urgent action that involves amending the legislation and fully restoring the freedom of organizations recognized as representative to choose their union delegates for the purpose of collective bargaining, as well as the freedom of a trade union to decide on the person who is best able to represent it within the enterprise and to defend its members in their individual claims, even when that person fails to obtain 10 per cent of the votes cast in occupational elections.

62. In a communication dated 20 August 2012 relating to the action taken on the Committee's recommendations in this case, the Government reiterates its intention to report on the evaluation of the Act of 20 August 2008 and on the consultations held within the framework of the HCDS on the different points raised. The Government points out that an evaluation of the implementation of the reform of trade union representativeness is scheduled to be carried out during the second half of 2013. A report on the application of the provisions on determining representativeness and on the implementation of the new rules for validating collective agreements is to be submitted to Parliament. It is also planned that the HCDS will submit the conclusions to be drawn from this report and, more generally, from the application of the Act of 20 August 2008, to the Labour Minister. Lastly, the Government states that it does not wish to call the reform into question, but rather to determine whether adjustments are necessary.

63. *In the light of the information provided by the complainant organization and the Government, the Committee requests the Government to report on the evaluation of the application of the Act of 20 August 2008 on the basis of the report submitted to Parliament on that subject and on the consultations held in the HCDS. The Committee hopes that this evaluation will duly take into account the concerns expressed above, as well as the Committee's conclusions and recommendations. Lastly, the Committee urges the Government to report on any measures that may eventually be considered or taken following the evaluation.*

Case No. 2228 (India)

64. The Committee last examined this case, which concerns alleged anti-union discrimination including dismissals, the suppression of a strike by the police and refusal to negotiate at the Worldwide Diamond Manufacturers Ltd (situated in the export processing zone (EPZ) of Visakhapatnam in Andhra Pradesh) and alleged dismissals and suspensions at the Synergies Dooray Automotive Ltd, at its November 2012 meeting [see 365th Report, paras 69–78]. On that occasion, the Committee:

(a) Noted the reference to 27 cases of the alleged cases of anti-union discrimination, which, according to the Government, the industrial tribunal-cum-labour court Visakhapatnam has dismissed, and requested the Government to provide copies thereof. Recalling that there were about 38 cases in total, the Committee requested the Government to provide information on the resolution of the remaining cases.

(b) As regards the question of restrictions on the right to collective bargaining of workers in the VEPZ and on the right of the Visakhapatnam Export Processing Workers' Union to take part in negotiations with the management of the Worldwide Diamonds Manufacturers Ltd, once again requested that the Government provide a copy of the minutes of the joint meeting held on 3 September 2004 that led to the lifting of the employer's lockout. The Committee also requested the Government to provide information on the evolution of collective bargaining and to send any agreement reached by the parties.

(c) Repeated its request that the Government take all necessary measures, including amending the Industrial Disputes Act of 1947, so as to ensure that suspended workers as well as trade unions could approach the court directly, without being referred by the state government.

(d) Noted the Government's indication that the workers dismissed from the Synergies Dooray Automotive Ltd have approached the industrial tribunal-cum-labour court and requested the Government to provide a copy of the judgment once it has been handed down. It also requested the Centre of Indian Trade Unions (CITU) – the complainant in this case – to keep it informed in this respect.

65. By its communications dated 19 February and 16 May 2013, the Government forwards copies of 39 decisions of the industrial tribunal-cum-labour court Visakhapatnam, which dismissed the respective complainants' petitions for reinstatement at the Worldwide Diamonds Manufacturers Ltd.

66. With regard to recommendation (b), the Government indicates that according to the information provided by the Development Commissioner, Visakhapatnam Special Economic Zone, the minutes of the meeting held on 3 September 2004 that led to the lifting of the employer's lockout are not available in the office records. Various other state authorities have been already addressed with a request to submit the same.

67. The Government further reiterates the information it had previously provided on the amendment to section 2A of the Industrial Disputes Act, 1947, pursuant to which, a worker can directly make an application to the labour court or tribunal for adjudication of the dispute where it involves discharge, dismissal, retrenchment or termination of service after the expiry of three months from the date he or she has made an application to the conciliation officer of the appropriate government for conciliation of the dispute, and the labour court or tribunal shall have the power and jurisdiction to adjudicate upon such dispute, as if it were a dispute referred to it by the appropriate government and all the provisions of the Act shall be applicable.

68. *The Committee notes the decisions of the industrial tribunal-cum-labour court, Visakhapatnam in 39 cases dismissing petitioners' requests for reinstatement, which do not appear to be in violation of freedom of association principles.*

69. *The Committee deeply regrets that the Government is not in a position to provide a copy of the minutes of a joint meeting held on 3 September 2004 that led to the lifting of the lockout at the Worldwide Diamonds Manufacturers Ltd. It further regrets that the Government provides no information as to whether workers of this enterprise can engage in collective bargaining with the management. It therefore once again requests the Government to provide information thereon, together with a copy of a collective bargaining agreement, should such exist.*

70. *The Committee further regrets that the Government has provided no new information regarding its request to amend the Industrial Disputes Act of 1947 so as to ensure that suspended workers as well as trade unions could approach the court directly, without being referred by the state government. The Committee recalls that acts of anti-union discrimination may vary in nature and that they are not confined to discharge, dismissal, retrenchment or termination of service, but that they also include all actions taken in retaliation against a worker exercising trade union activities, such as suspension. A worker victim of this kind of act should have access to direct means of redress which are expeditious, inexpensive and fully impartial. Therefore, the Committee reiterates its request to amend the legislation so as to ensure that suspended workers as well as trade unions may approach the court directly on all issues of alleged anti-union discrimination. The Committee invites the Government to consider having recourse to the technical assistance of the ILO and requests it to keep the Committee informed of developments as regards this matter.*

71. *The Committee notes that no new information has been provided by the Government or by the Centre of Indian Trade Unions (CITU) on the decision by the industrial tribunal-cum-labour court concerning workers dismissed from the Synergies Dooray Automotive Ltd. It once again requests the Government to provide a copy of the judgment once it has been handed down and reiterates its request to the CITU to keep it informed in this respect.*

Case No. 2512 (India)

72. The Committee last examined this case, which concerns alleged acts of anti-union discrimination and interference in trade union affairs through the creation of a puppet union, dismissals, suspensions and transfers of trade union members, arbitrary reduction of wages, physical violence and lodging of false criminal charges against its members, at its November 2012 meeting [see 365th Report, paras 79–87]. On that occasion, the Committee expected that the cases concerning dismissed workers still pending before the courts would be concluded without delay and urged the Government to keep it informed of the outcome. It also requested the complainant to provide all relevant updated information regarding all the allegations of unfair labour practices, including cases of suspension, show cause notices and other disciplinary actions, as well as allegations of filing, by an employer, of false criminal charges against trade unionists in the basis of which they have been subsequently dismissed. Moreover, the Committee once again requested the Government to encourage the government of Tamil Nadu to address the matter of the necessity to adopt legislative provisions in furtherance of trade union rights and to provide information on all measures taken in order to bring legislation into conformity with freedom of association principles.

73. In its communication dated 2 April 2013, the Government furnishes details of the cases filed by dismissed employees as per the information provided by the management of the MRF Arakonam plant. Accordingly, the following dismissal cases are pending before the High Court of Madras: M. Subramani and P.N. Ravinder (both dismissed on 18 March 2004 for stoning the company bus). Furthermore, the following dismissal cases are pending before the Industrial Tribunal of Chennai: D. Runsted (dismissed on 5 January 2011 due to low performance), T.N. Ramesh (dismissed on 5 January 2011 due to low performance), A. Shajahan (dismissed on 5 January 2011 due to intimidation), K. Raghupathy (dismissed on 5 January 2011 due to intimidation), A. Murali (dismissed on 5 January 2011 due to intimidation and abusing), R. Mohan (dismissed on 24 February 2012 due to absenteeism), K. Sivalingam (dismissed on 21 May 2012 due to low performance), T. Sekar (dismissed on 19 June 2012 due to instigation of stay in strike) and L. Harikrishnan (dismissed on 26 November 2012 due to absenteeism).

74. The Government further states that the management appointed an independent external person as inquiry officer to conduct the inquiry into the charges levelled against those employees. According to the Government, the inquiry has been conducted following the principles of natural justice. The inquiry officer, after examining the witnesses and evidence, has submitted the findings report. The charges have been proved beyond a reasonable doubt and the inquiry officer has found them guilty of the charges levelled against them. The order of termination has been passed considering the gravity of the misconduct, past record of workmen and as per the Certified Standing Orders applicable. The Commissioner of Labour of Chennai also observed that the dismissal cases are pending before the appropriate legal forum. The Government adds that in view of the pendency of the cases before judiciary, no further action could be taken by the Government.

75. The Government also indicates that, as per the inputs from the government of Tamil Nadu, they have taken note of the recommendations of the Committee concerning the allegations of unfair labour practices. It further explains that the authorities under the Industrial Disputes Act, 1947, have taken prompt action on the industrial disputes raised by the union and disposed them in accordance with prevailing law in this regard. The State Government cannot interfere in the functioning of courts.

76. Concerning the recommendation to bring the legislation of the government of Tamil Nadu in accordance with the principles of freedom of association, including the adoption of legislative provisions that further the goal of preventing anti-union discrimination and the infringement of trade union rights, the Government asserts that the Industrial Disputes Act, 1947, provides for a framework for investigation and settlement of industrial disputes. It adds that it brought various amendments in the Industrial Disputes Act on 15 September 2010, which provide for the establishment of a Grievance Redress Machinery in every industrial establishment employing 20 or more workmen. The Government finds that in Tamil Nadu vibrant conciliation machinery with requisite expertise to meet the new challenges has been put in place, and that the existing provisions of the Industrial Disputes Act and rules made thereunder prescribe elaborate procedures for resolution of disputes and provide for mechanisms to address the issues raised by the trade unions. The Government further adds that the Trade Union Act, 1926, does not provide for the recognition of trade unions, but that the issue of enacting legislation in this regard was deliberated in the tripartite consultative committee, namely the State Labour Advisory Board, on 30 January 2013, and the subject is under examination of the State Government.

77. *The Committee takes note of the information provided by the Government. Concerning the anti-union dismissals denounced by the complainant, the Committee deeply regrets that two cases are still pending before the High Court of Madras although almost ten years have elapsed since the termination of employment of the relevant employees. The Committee recalls 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 of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 827]. Considering that justice delayed is justice denied, the Committee firmly expects that these cases will be concluded without any further delay and urges the Government to provide copies of the rulings as soon as they are handed down. Observing that in a communication dated 27 October 2010, the Government had indicated that 31 dismissal cases were pending in court, the Committee requests the Government to provide up-to-date information on the outcome of the remaining judicial proceedings. Furthermore, the Committee urges once again the Government to provide detailed observations regarding the status of the cases of allegedly false criminal charges brought against members and officers of the MRF United Workers' Union and of the cases concerning alleged transfers of union members because of their union membership or activities.*

78. *With regard to the Committee's previous recommendations that the Government actively consider the adoption of legislative provisions in furtherance of trade union rights to bring legislation into line with the principles of freedom of association, the Committee requests the Government to provide detailed information on the outcome of the deliberations of the State Labour Advisory Board on 30 January 2013 and of the examination by the State Government of the issue regarding the enactment of legislation regarding recognition of trade unions. Considering that the absence of a clear objective and precise procedure for determining the most representative union has led to the lack of resolution of this matter and has fomented continuing conflict within the company, which is not conducive to harmonious industrial relations, the Committee firmly expects that the Government will actively consider, in full and frank consultations with the social partners, establishing objective rules for the designation of the most representative union for collective bargaining purposes. Furthermore, the Committee once again requests the Government to give due consideration to the adoption of legislative provisions that further the goal of preventing anti-union discrimination including by providing for sufficiently dissuasive sanctions against such acts. The Committee notes the adoption in 2010 of amendments to the Industrial Dispute Act which provide for the establishment of a grievance redress*

machinery, but once again recalls the need to amend the relevant provisions of the Act to ensure that suspended workers and trade unions may approach the court directly, without being referred to by the State Government.

Case No. 2752 (Montenegro)

79. The Committee last examined this case at its March 2012 meeting [see 363rd Report, paras 900–922] when it made the following recommendations:

(a) In view of the recent suspension and disciplinary proceedings initiated against Mr Pajovic, President of the new Trade Union of the RTCG, who had previously been dismissed but was then re-engaged, the Committee once again urges the Government to institute an independent investigation into the allegations that these workers were dismissed or suspended for anti-union reasons and to provide full details as to the outcome. Noting that the complainant indicates that Mr Janjic's downgrading case is now pending before the courts, the Committee requests the Government and the complainant to provide the court judgment as soon as it is handed down, as well as any other additional information relating to this matter. In the meantime, the Committee requests the Government to ensure that Mr Janjic is maintained in his position pending the final court judgment.

(b) The Committee requests the complainant to provide more information concerning the allegations of threats against, and pressure on trade union members to withdraw from their union and urges the Government to carry out an independent investigation without delay into these serious allegations. It requests the Government to provide detailed information on its outcome.

(c) Concerning the issues of recognition of the complainant organization as representative and the refusal to grant certain facilities to the union, the Committee requests the Government to provide information on the outcome of the proceedings pending before the court. In the meantime, the Committee once again requests the Government to bring the parties – the management of the enterprise and the New Trade Union of the RTCG – together in order to facilitate their reaching an agreement in relation to the facilities to be provided to the representatives of the complainant, bearing in mind the principles above. It requests the Government to keep it informed in this respect.

80. In its communication dated 19 July 2012, the complainant provides additional information on the anti-union dismissals, suspensions and harassment faced by its members and officers, as well as the related judicial procedures.

81. As regards recommendation (a), the complainant reiterates its allegations that the dismissed union officers Mr Pajovic, Ms Popovic and Mr Janjic had been reengaged in other positions with lower salary. The complainant alleges that: (i) the High Court has issued a final judgment declaring the reengagement of Mr Janjic, a radio journalist, as an administrative clerk for a much lower salary, as lawful; (ii) the reengagement of Ms Popovic, an adviser to the General Manager, as an administrator paid almost twice less than in her previous functions, was also confirmed; (iii) both Mr Janjic and Ms Popovic have filed appeals against these decisions, which are now pending at the Supreme Court; and (iv) Mr Pajovic who had also been reengaged in a new lower salary position without filing a complaint against this decision and had been suspended in February 2012, was subsequently dismissed following allegedly fabricated disciplinary proceedings on 16 May 2012 and was deliberately not given back his employment booklet, without which he could not apply for health care and other unemployment rights (a complaint was filed in this regard with the labour inspection and the court).

82. As regards recommendation (b), the complainant declares that the Government has failed to conduct an independent investigation on the allegations of threats against, and pressure on trade union members to withdraw from their union, as requested by the Committee. The

complainant organization provides various testimonies of members who were allegedly harassed, threatened and pressured to withdraw from the union. In particular, it alleges that: (i) the management repeatedly brought allegedly false criminal charges against Mr Pajovic and Ms Popovic, which have been partly dismissed (e.g. for defamation) or are still pending, including for abuse of authority (a counterclaim was filed) and for secretly recording and eavesdropping, and that Mr Janjic was the subject of disciplinary proceedings due to unjustified absence from work (refuted by the complainant), which were conducted during his sick leave and resulted in a reduction of salary by 20 per cent for three months; (ii) as regards the dispute concerning the return of the documentation belonging to the union, which had been taken away by the management after the dismissals in 2008, the complainant alleges that the proceedings have lasted now for more than two years, and that Mr Pajovic was punished for protesting against the delay with fines amounting to €2,600 (as he is allegedly unable to pay, he will have to serve a prison term of four months); and (iii) bonuses are generally not given to the members of the complainant (only to occasional passive union members or to those performing work as part of a team).

83. As regards recommendation (c), on the issue of recognition of the complainant organization, the complainant indicates that none of its applications to the court, the Ministry of Labour or the enterprise for review and determination of the most representative union was successful, in spite of a judicial order for the complainant union and the allegedly pro-government union to submit copies of registration forms to the court, which were not complied with. The complainant further asserts that the Government has not yet complied with the Committee's recommendation to bring the management of the enterprise and the complainant together in order to facilitate their reaching an agreement in relation to the facilities to be provided to the representatives of the complainant. Moreover, the complainant alleges that the management continues to confiscate its union dues by deducting them from the wages of 30 of its members and directing the money to the pro-government union instead (complaint letters of two union members are attached to the complaint). The complainant organization adds that it continues to be generally banned from meetings of the enterprise and that a lawsuit has been filed in this regard to the Prosecutor's Office.

84. In its communication dated 2 August 2013, the Government indicates, with respect to recommendation (a), that Miodrag Boskovic, Dragan Janjic and Mirjana Popovic – who had been the subject of disciplinary proceedings in 2008 – had been dismissed but that, in accordance with the final decision of the court, they returned to work. On 2 August 2013, the Administration for Inspection Affairs found that Mr Janjic, Ms Popovic and Mr Boskovic were working in the enterprise and performing duties in accordance with their qualifications and job performance. The Government further emphasizes that in 2012–13 neither of these employees nor the members of their union addressed grievances to the Administration for Inspection Affairs.

85. *The Committee recalls that this case concerns allegations that the management of the Radio and Television of Montenegro (RTCG) refused to recognize the New Trade Union of RTCG as the representative organization of the workers, as well as the dismissal of its officers and harassment of its members. The Committee notes the complainant's additional allegations as well as the information provided by the Government in its previous recommendation.*

86. *The Committee regrets that the Government did not provide any information as to the requested conduct of an independent investigation into the alleged anti-union dismissals in 2008 of four union officials (Mr Dragan Janjic, Mr Radomir Pajovic, Ms Mirjana Popovic and Mr Miodrag Boskovic). Concerning the allegation that these workers had been reengaged in new positions with lower salary, the Committee notes the Government's*

indication that on 2 August 2013, the Administration for Inspection Affairs found that Mr Janjic, Ms Popovic and Mr Boskovic were working in the enterprise and performing duties in accordance with their qualifications and job performance. Noting that the complainant indicates that Mr Janjic and Ms Popovic's demotion lawsuits were still pending before the courts, the Committee requests the Government and the complainant to provide the court judgments as soon as they are handed down as well as any additional information relating to this matter. Moreover, the Committee deeply regrets the seriousness of the additional allegation that Mr Pajovic, President of the union, who had previously been dismissed, then re-engaged and subsequently suspended, was again dismissed on 16 May 2012 following fabricated disciplinary proceedings. The Committee recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 799]. In light of the above, the Committee once again urges the Government to institute an independent investigation into the allegations of repeated acts of anti-union discrimination allegedly committed by the company since 2008, including the dismissal of Mr Pajovic on 16 May 2012, and to keep it informed on the outcome of such inquiry. Should it be found that Mr Pajovic was dismissed due to his exercise of legitimate trade union activities, the Committee requests the Government to take the necessary measures to ensure that he is fully reinstated without loss of pay. In the event that the reinstatement is not possible, for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union member concerned is paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals.*

87. *As regards the question of representativeness, the Committee notes that, according to the complainant, the proceedings initiated to achieve the review and determination of the majority representative union were not successful. The Committee further notes the additional allegations made by the complainant, including the alleged confiscation of union dues by the enterprise and their transfer to another union and requests the Government to respond to these allegations without delay.*

88. *Finally, the Committee regrets that the Government has not provided information on the measures taken to bring the management of the enterprise and the union together in order to facilitate their reaching an agreement in relation to the facilities to be provided to the representatives of the complainant and once again urges the Government to intercede with the parties in order to facilitate their reaching a mutually satisfactory agreement in this regard.*

Case No. 2667 (Peru)

89. At its March 2013 meeting, the Committee made the following recommendation [see 367th Report, para. 79]:

> The Committee regrets that the judicial proceedings relating to the dismissal of Mr David Elíaz Rázuri, Secretary for Defence of SUNTRANEP have lasted for more than four years – the proceedings were initiated in 2009 – and emphasizes 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 judicial authorities will issue a final ruling in the very near future and requests the Government to keep it informed about the ruling that is handed down.

90. In its communications dated 5 April and 9 August 2013, the Government indicates that it has transmitted to the Office of the President of the Judiciary the Committee's recommendations concerning the delay in the administration of justice. With regard to the case of union official Mr David Elíaz Rázuri, the Government states that, in August 2012, following several appeals, the judicial authority confirmed that he had been wrongfully dismissed and ordered his reinstatement, but the other party filed an application for judicial review. The Government indicates that this is one of the legal options available for exercising the right of defence.

91. *The Committee takes note of this information and requests the Government to inform it of the outcome of the judicial review. In light of the confirmation on appeal of his wrongful dismissal, the Committee requests the Government to ensure that Mr Rázuri is reinstated in his post pending the final judgment.*

Case No. 2690 (Peru)

92. At its March 2013 meeting, the Committee made the following recommendation on the matters still pending [see 367th Report, paras 82–83]:

> In its communications of 7 February, 3 May and 22 September 2011 and 4 May and 21 August 2012, the Government states that SINAUT–SUNAT filed an appeal for *amparo* (protection of constitutional rights) with the judicial authority with a view to having the employer (SUNAT) sign a written arbitration agreement; the judicial authority rejected the application of the statute of limitations called for by the employer; SUNAT appealed against the ruling, and the appeals court, considering the employer's request for application of the statute of limitations to be well-founded, overturned the lower court ruling and ordered the case to be shelved. The Government adds that the trade union filed a constitutional action. This was granted, and the matter was ordered to be referred to the Constitutional Court. The latter has examined the case and a judgment is currently pending.
>
> The Committee notes this information and requests the Government to send a copy of the ruling of the Constitutional Court.

93. In its communication of 31 July 2013, the Government states that, on 16 July 2013, the Constitutional Court ruled on the appeal filed by SINAUT–SUNAT, declaring the request unfounded on the grounds that optional arbitration and striking are alternative and non-exclusive options in collective bargaining, and that resorting to one of them does not preclude the possibility of resorting to the other; however, choosing either option will modify the type of labour arbitration, which is only voluntary in accordance with article 63 of the single uniform text of the Collective Labour Relations Act. In this regard, the trade union opted to exercise its right to strike during the collective bargaining of the list of claims for the period 2008–09. The Government adds that, therefore, the trade union's right to collective bargaining was not violated, and highlights SUNAT's statement to the effect that: (1) it is interested in finding a fair solution through collective bargaining, for which reason a number of meetings have been held as part of the collective bargaining process and out of court with the Ministry of Labour; (2) in 2011, 2012 and 2013, SUNAT concluded collective agreements with several trade union organizations, such as FENTAT, SUTTSUNAT and SINTRADUANAS; and (3) it is complying with the internal regulations governing collective bargaining in the public administration, based on the principles of good faith and free and voluntary collective bargaining. Lastly, the Government highlights the fact that the abovementioned Constitutional Court ruling refers to the collective bargaining process for the period 2008–09.

94. *The Committee takes note of this information and, in particular, of the outcome of the Constitutional Court ruling, which rejects the requests made by the complainant organization in its appeal.*

Case No. 2816 (Peru)

95. At its March 2013 meeting, the Committee made the following recommendations on the allegations still pending [see 367th Report, para. 1007]:

- The Committee invites the Government to establish tripartite dialogue as a means of improving the system of collective bargaining in public administration and overcoming the difficulties and problems that, as this case illustrates, arise in practice. The Committee reminds the Government that technical assistance is available from the ILO, if it wishes to make use of it.
- The Committee requests the Government to send the administrative authority's existing and future decisions concerning alleged misuse of email by union officials Ms María Covarrubias and Mr Jorge Carrillo Vértiz. As in the conclusions to its previous examination of the case, the Committee suggests that the employer and the workers' organization strive to reach agreement on the modalities for the use of the email system.

96. In response to the Committee's first recommendation, the Government states, in its communication dated 17 May 2013, that the Office of the National Superintendent for Customs and Tax Administration (SUNAT) is acting in strict compliance with current regulations, in a way that is respectful of the rights of the workers and in a context of willingness to engage in dialogue and to reach agreements that are in line with current regulations. In the collective bargaining context, SUNAT is interested in finding an equitable solution, as demonstrated by the fact that it has shown interest in, and a willingness to, work towards finding a peaceful solution by participating in various meetings, both as part of the collective bargaining process and on an informal level. In this regard, the Government highlights that in 2011, 2012 and 2013, SUNAT signed collective agreements with several trade union organizations. *The Committee reiterates the importance of engaging in tripartite dialogue with a view to improving the system of collective bargaining, and of inviting SINAUT SUNAT, the complainant organization.*

97. With regard to the Committee's second recommendation, the Government states that the labour administration authority ruled that the body did not commit a breach of labour standards, since legal provisions exist concerning the use of email in public institutions. Moreover, the Government adds that SUNAT has implemented regulations on the use of email that reflect not only an internal policy, but are in line with a national policy aimed at optimizing its use through rational utilization, as set out in Directive No. 005-2003-INEI/DINP entitled "Rules on the use of email in public administration bodies", approved by Departmental Decision No. 088-2003-INEI, which establishes that "the email accounts of the employees of public institutions must be used for activities related to the performance of their duties in those institutions". In this regard, SUNAT issued Circular No. 006-2008, dated 11 March 2008, indicating that email was an official means of communication and information exchange provided to employees, who should use it exclusively for the performance of their duties. Therefore, the body in question is complying with the regulations governing the appropriate use of institutional email accounts, without breaching the fundamental standards governing the rights of workers.

98. *The Committee reiterates its previous recommendations and once again requests the Government to indicate whether the administrative authority has adopted any decisions in relation to the use of email by union officials Ms María Covarrubias and Mr Jorge Carrillo Vértiz.*

Case No. 2825 (Peru)

99. At its March 2013 meeting, the Committee made the following recommendations on the pending matters [see 367th Report, para. 96]:

> Regarding the transfers of the officials and all the members of the Trade Union of Workers of Farmacias Peruanas SA (SINTRAFASA), the Government reports that the labour inspectorate found the enterprise guilty of serious violations and fined it PEN8,316 for the unjustified transfer of trade union officials and members (a total of 60), which affected the normal running of the trade union organization. The Government adds that the enterprise filed a writ of appeal and the penalty was revoked given that in their report the inspectors did not overturn the arguments and documents presented by the enterprise, since the report must contain a summary of the allegations and the steps taken to prove or disprove them, and therefore there were no grounds to maintain the decision. *The Committee requests the Government to indicate whether the trade union appealed this reconsideration and if so to inform it of the result.*

100. In its communication dated 16 July 2013, the Government states that the trade union SINTRAFASA did not appeal the reconsideration of the fine initially imposed on the enterprise. *The Committee notes this information.*

Case No. 2826 (Peru)

101. At its March 2013 meeting, the Committee made the following recommendations on the matters still pending [see 367th Report, para. 1020]:

(a) The Committee requests the Government to keep it informed of any developments regarding the processing of Bill No. 761/2011-CR, the Act concerning non-traditional exports, by Congress.

(b) The Committee reiterates its previous recommendation inviting the Government, taking into account the specific features of this case, to consider the possibility of allocating some public premises to the complainant for its use.

102. With regard to recommendation (a), the Government states in its communications dated 7 and 13 May 2013 that the bill on the promotion of non-traditional exports is being processed by the Labour and Social Security Committee of Congress, which has heard the views of several authorities and the social partners and has requested further technical reports from public and private institutions. The bill is currently at the preliminary review stage. *The Committee recalls that, at its November 2011 meeting, it had requested that the legislation in force in the textile sector of non-traditional exports sanction acts of anti-union discrimination, and expects that the Act will be adopted in the near future and will include sufficiently dissuasive sanctions against acts of this kind.*

103. With regard to recommendation (b), the Government states that the National Superintendency for State Assets (SBN) has indicated that it makes state premises available free of charge for use by individuals for the purposes of carrying out social, cultural and/or sports development projects, in accordance with the provisions of sections 107–108 of the Regulations of Act No. 29151, the General Act of the National System of State Assets, approved by Supreme Decree No. 007-2008-VIVIENDA; however, it currently has no available premises. The SBN has indicated that if the textile workers of Peru were to identify state premises for their purposes, they could submit a request within the scope of the provisions of sections 107–108 of the Regulations of Act No. 29151, the General Act of the National System of State Assets, to the Subdirectorate for the Administration of State Assets of the SBN for evaluation and processing in accordance with the law. The Government adds that the complainant (the Federation of

Textile Workers of Peru (FTTP)) may select premises that it considers to be appropriate in accordance with the abovementioned legislation.

104. *The Committee takes note of this information and invites the complainant to apply for the use of premises within the framework of the legal provisions mentioned by the Government.*

Case No. 2854 (Peru)

105. At its March 2012 meeting, the Committee made the following recommendations on the pending issues [see 363rd Report, para. 1045]:

- The Committee firmly expects that, in the future, there will be timely consultations with the trade unions concerned in respect of any contemplated restructuring or privatization processes prior to their being taken. The Committee calls on the Government to initiate without delay such consultation as regards the effects of the privatization.
- In view of the circumstances of this case, the Committee believes that penal sanctions should not be imposed on the trade unionists who participated in the strikes or on trade union organizations. The Committee requests the Government to inform it of the decision of the Public Prosecution Service concerning the complaint lodged against several strikers by the Office of the Attorney-General of the Ministry of Transport and Communications and expects that this decision will take into account the conclusions and the relevant abovementioned principle.

106. In communications dated 15 October and 10 December 2012 and 28 February 2013, the National Federation of Workers of the National Ports Enterprise (FENTENAPU) sent further information on new concessions of port terminals without the complainant federation being heard or allowed to participate. According to the allegations, the concessions are marred by issues of corruption and violations of due process, and the aim is to reduce the unionized workforce. Moreover, workers who have not accepted the enterprise's financial proposals (retirement incentive programmes) would be exposed to sanctions if they reject the proposals. According to the complainant, most of the workers affected by the staff reductions are involved in collective bargaining, and the mass dismissals affect over 200 workers.

107. In its communication of 25 September 2012, the Government indicates that by a decision dated 21 March 2012 the Criminal Prosecutor of the Fifth Provincial District of Callao found that there were no grounds for bringing criminal charges against the strikers and, as a third party with civil liability neither against the Puerto de Callao Dockers Union, for alleged crimes against public security, attacks on collective transport services and the media, and for hindering the proper functioning of public services. The charges were therefore definitively set aside. *The Committee notes this information with interest.*

108. In its communication of 17 September 2013, the Government indicates that, according to the report of the Department for Investment Promotion, the processes for the promotion of private investment in relation to national port infrastructure have the objective of entrusting the successful bidder with the obligation to design, finance, construct, operate or subsequently transfer the new infrastructure to the State of Peru, for which reason it cannot be maintained that they are processes for the restructuring or privatization of the National Ports Enterprise (ENAPU), which would require prior consultation with the unions concerned, since the procedures are restricted to port property in the public domain owned by the State, and not the assets of ENAPU. Moreover, these promotional procedures do not envisage the dismissal of workers engaged in providing services for ENAPU, as the sole aim is to achieve greater efficiency in the administration of the port infrastructure owned

by the State of Peru. Accordingly, the State is not violating any fundamental rights in that respect.

109. The Government reports the indications by the Ministry of Transport and Communications that: (a) the process of the concession of the Multipurpose Northern Terminal of the Port of Callao is one of the transport infrastructure and services projects that were entrusted to the private sector under concession; (b) Annex 21 of the concession contract refers to the revenue-sharing partnership agreement concluded between the concessionaire APM Terminals Callao SA and ENAPU SA, under the terms of which the latter provides the real estate and, in exchange for participating in the operation, receives a total of 17 per cent of the revenue shown on the accounts as at 31 December each year, prior to the determination of the taxation on profits; (c) one of the obligations of APM Terminals Callao SA is to offer employment, during a period of ten years, to a number of the workers of ENAPU SA equivalent to 60 per cent of the total operating workforce listed in Annex 23 of the concession contract; and (d) up to the present, APM Terminals Callao SA has taken on a total of 500 workers engaged by ENAPU SA, of whom 366 are on the list of workers contained in Annex 23, which corresponds to 73 per cent of the workers listed in Annex 23.

110. With regard to the transfer of the Chimbote Port Terminal, the Government indicates that the General Directorate of Water Transport of the Ministry of Transport and Communications explains that it was carried out as part of the process of the decentralization of the country, in accordance with article 188 of the Political Constitution of Peru, which provides that decentralization is a form of democratic organization which is a permanent and compulsory State policy, with the fundamental objective of integrated national development. In that respect, port transfers in the context of the decentralization process are not part of a privatization process.

111. The Government adds that the committee appointed for the transfer of Chimbote Port Terminal included representatives of the different sectors of ENAPU SA, and that as a consequence the workers participated actively in the process. With reference to the retirement incentive programme, Supreme Decree No. 044-2010-MTC established the Special Voluntary Retirement Benefit for Dock Work (BECVP) for all dockworkers in the Callao Port Terminal. The benefit consisted of the voluntary retirement of workers if they considered it appropriate in exchange for financial compensation. That does not correspond to a policy of mass dismissal, particularly as coverage by the BECVP was free and voluntary. In relation to the retirement incentive programme, Act No. 27866, the Port Labour Act, in section 13 establishes the labour system for dock work, specifying that it is included in the labour regime for the private sector, with the corresponding rights and benefits. Section 86 of Legislative Decree No. 728 sets out objective reasons for the termination of contracts of employment, including economic, technological, structural and similar reasons, and the liquidation, dissolution or bankruptcy of the enterprise. The retirement incentive programme is consequently considered to be totally lawful, and cannot therefore under any circumstances be regarded as an instrument of mass dismissal.

112. The complainant has also referred the present case to the Inter-American Human Rights System. With a view to avoiding duplication by international bodies, the Government therefore requests the Committee not to continue its examination of the present complaint, as a case is currently under review at the Inter-American level, on which the Inter-American Court of Human Rights will issue a ruling in due course.

113. *The Committee notes the Government's reply, from which it can be deduced that there were no in-depth consultations with the complainant during the process of the concession of port terminals, except in the case of the Chimbote terminal. The Committee once again*

emphasizes the importance of holding in-depth consultations with the complainant on the impact of the decentralization that is being carried out in the enterprise.

114. *With regard to the alleged anti-union nature of this process which, according to the complainant, affects most of the unionized workers involved in collective bargaining, the Committee notes the Government's indication that the processes do not envisage the dismissal of workers and that their objective was the transfer of certain services to the private sector, and that there is a commitment to re-engage a significant percentage of the workers (those who gave up their employment and freely accepted the financial compensation), with 500 workers already being recruited. The Committee finds that the complainant has not provided firm proof of the anti-union motivation behind the decentralization process. The Committee recalls that its mandate is confined to violations of trade union rights, and does not cover restructuring, privatization and decentralization processes, nor determining whether or not the authorities have acted in breach of domestic law when carrying out these economic processes. Finally, noting that the complainant has referred the matter to a procedure which will give rise to a ruling by the Inter-American Court of Human Rights, the Committee recalls that it has examined the present case within the terms of its mandate, which consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant ILO Conventions [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 6]. The Committee emphasizes that, within the context of this mandate, which differs from that of other international bodies, it issued its recommendations in 2012.*

Case No. 2856 (Peru)

115. At its March 2013 meeting, the Committee requested the Government to provide it with the final ruling handed down concerning the dismissal of the trade union official Ms Clara Tica by the Callao regional government [see 367th Report, para. 106]. The Committee had noted that, ruling in first and second instances, the courts had found in favour of this trade union official, but the employer had lodged a cassation appeal [see 367th Report, para. 105].

116. In its communications of 5 April and 25 May 2013, the Government states that the Callao regional government indicates that it does not yet have a vacant post to enable it to reinstate the trade union official in question in her original post or one similar to it, but for the time being it has again contracted her under a service provider contract. In the meantime, the Second Civil Division of the Callao Superior Court of Justice heard the case on 10 April 2013 in conjunction with the cassation appeal but the parties did not attend.

117. *The Committee takes note of this information. It requests the Government to keep it informed of the outcome of the cassation appeal and hopes that the ruling will be handed down in the near future.*

Case No. 2900 (Peru)

118. In its previous examination of the case at its meeting in October 2013, the Committee made the following recommendations on the matters still pending [see 370th Report, para. 628]:

(a) With regard to the alleged anti-union dismissal of the Secretary-General of SUTBAF, Mr Hugo Rey Douglas, on 2 December 2010, the Committee expects that the judicial authority will hand down a ruling in the very near future and that, if the dismissal proves to have been of an anti-union nature, he will be reinstated without delay and paid any outstanding wages. The Committee requests the Government to keep it informed on this matter.

(b) As for the alleged challenge against the union registration of SUTBAF by the bank, the Committee, regretting the lack of reply from the Government to these allegations, requests the Government to keep it informed about the status of this organization's registration.

(c) The Committee requests the Government to keep it informed about the outcome of the negotiations between the bank and SUTBAF and whether an agreement is ultimately reached on the terms and conditions of employment in the aforementioned workplace.

119. In response to the Committee's recommendations (b) and (c), the Government states, in its communication of 3 December 2013, that the union registration of the Banco Falabella Workers' Trade Union (SUTBAF) remains fully in force and that the bank and the trade union signed a collective agreement on 20 February 2012. *The Committee notes this information with interest.*

120. With respect to the Committee's recommendation (a), the Government states that the appeals court, in response to a further appeal, ordered that a new judgment be handed down by the judicial authority of first instance on the dismissal of the trade union official Mr Hugo Rey Douglas. *The Committee notes this information and requests the Government to provide a copy of the new ruling handed down in this regard.*

Case No. 2915 (Peru)

121. At its March 2013 meeting, the Committee made the following recommendations on the matters still pending [see 367th Report, para. 1126]:

(a) As regards the non-renewal of the administrative service contracts of three officials and seven members of SITRAUSM, the Committee requests the Government to conduct an inquiry into the grounds for non-renewal of the contracts so that it can determine whether or not San Marcos Higher National University, a public institution, committed acts of anti-union discrimination. The Committee requests the Government to keep it informed in this regard.

(b) The Committee requests the Government to conduct an inquiry into the allegations of refusal to grant trade union leave to officials of SITRAUSM and refusal to pay or check off the union dues of the aforementioned organization, and also into the alleged refusal by the university to engage in collective bargaining with the aforementioned union.

122. As to recommendation (a), the Government denies having violated trade union rights and states in its communication of 18 July 2013 that the dismissal of workers employed under administrative service contracts upon the expiration of those contracts was not motivated by anti-union sentiment, as only two officials from the executive committee of SITRAUSM, which has 22 members, were dismissed upon the expiration of their contracts; it is therefore not a question of dismissals but of the expiration of contracts. Furthermore, the Government states that the San Marcos Higher National University has been making deductions on behalf of SITRAUSM since June 2012, deductions which are duly authorized by the staff employed under an administrative service contract who are members of the trade union, and granted union leave to the executive committee in accordance with Resolution No. 01273-R12 of 9 March 2012, with a view to regularizing the period between 11 August 2011 and 10 August 2013.

123. The Government adds that the workers employed under an administrative service contract are entitled to establish trade unions and to bargain collectively through their organizations. As to the collective bargaining of the trade union's list of claims for the period 2011–12, a number of problems arose in 2012, including, for example, the fact that the trade union registered itself as representing private-sector workers (when, in reality, all its members are employed under an administrative service contract) and not workers

employed under an administrative service contract. However, the Government states that the trade union has submitted its list of claims for the period 2012–13 in accordance with the relevant legislation and that the list of claims is currently being processed.

124. *The Committee hopes that the collective bargaining process will be concluded in the near future. The Committee notes with interest the information provided by the Government concerning the payment of union dues to the trade union and the union leave granted to its officials, and requests the Government to indicate whether the trade union members whose contracts were not renewed have filed administrative appeals or appeals with the judicial authority on trade union grounds.*

Case No. 2890 (Ukraine)

125. The Committee last examined this case, which concerns the issue of the assignment of trade union property, and the alleged interference in the establishment of trade union organizations and harassment of trade union leaders at its March 2013 meeting [see 367th Report, paras 1240–1257]. On that occasion, the Committee made the following recommendations:

(a) Noting with interest the information provided by the Government in relation to the meeting held between the directors of the State Property Fund of Ukraine and the FPU, with the participation of representatives of the implementing ministries, in order to settle the question of the assignment of property, as well as the Agreement reached, the Committee requests the Government to keep it informed of further developments in this regard.

(b) As concerns the remaining alleged instances of the interference in the FPU and its affiliates' trade union affairs, the Committee requests the Government to ensure that these allegations are investigated through independent inquiries and to keep it informed of the results of such inquiries. Moreover, it once again requests the Government to provide its observations on the two 2011 decisions of the Shevchenkivski District Court of Kiev.

(c) The Committee once again requests the Government to institute an independent inquiry into the allegation of the establishment of the Trade Union of the Sea Transport Employees (United) by, or upon, the initiative of employers and to provide information on its outcome.

126. In its communications dated 8 April, 22 July, 29 August and 2 October 2013, the Government indicates that the State Property Fund of Ukraine is continuing to hold working meetings with representatives of the Federation of Trade Unions of Ukraine (FPU) and the competent authorities to resolve the issue of the compilation of an inventory and the list of properties which, as of 24 August 1991 were being managed, held and/or used by Ukrainian trade unions and to make proposals on their future use. The Government informs that the draft directive of the Cabinet of Ministers of Ukraine on "Certain matters relating to the management of property of all-union civil society associations (organizations) of the former USSR being returned to state ownership by a court decision" that was agreed upon with the FPU has not yet been adopted by the Government. According to the Government, it continues working with the unions on the issue of the assignment of property.

127. With regard to the recommendation (b), the Government refers to the legislation in force which provides for the protection against interference in trade union activities by the authorities. It further provides a copy of rulings of the Appellate Court of Kiev dated 21 September and 17 August 2011, respectively, overturning the two decisions of the Shevchenkivski District Court of Kiev.

128. The Government further indicates that the matter of the establishment of the Trade Union of the Sea Transport Employees (United) was examined by the relevant authorities. On the basis of the information received it was possible to conclude that the union was not founded by, or upon, the initiative of employers. The Government explains that the union has in fact complained of interference in its activities by the heads of the state enterprises. To address this matter, by a communication dated 25 August 2012, addressed to the heads of the state enterprises against which the Trade Union of the Sea Transport Employees (United) has complained, the Ministry of Social Policy provided clarifications on the legislation and the ILO Conventions which Ukraine has ratified with regard to trade union activities and accountability for violations of trade union legislation. The Ministry recommended to the managers to cooperate with the primary trade union organizations established and operating at these enterprises.

129. *The Committee takes note of the information provided by the Government. It welcomes the Government's indication that it has engaged with trade unions on the question of the assignment of property and expects that it will continue doing so until this matter is resolved.*

130. *The Committee further takes note of the rulings of the Appellate Court of Kiev overturning the two 2011 decisions of the Shevchenkivski District Court of Kiev (in the first decision, the court of first instance had declared illegal the decision by the Statutory Commission of the FPU not to include one more candidate in the list of the candidates for the FPU Chairperson election and obliged the organization to take a decision on the inclusion of this candidate in the list of candidates; in the second decision, the court had invalidated the decision of the Tenth Kiev City Trade Union Conference of 17 December 2010 and reinstated, in the position of the Chairperson, the candidate who did not have the majority of votes), which, based on the information provided by the complainant, appeared to interfere with the right of trade unions to elect their representative in full freedom. The Committee regrets, however, that no observations have been provided by the Government on a number of alleged instances of interference by the authorities in the activities of the FPU and its affiliates. These allegations include: inquiry into trade union fees paid to the structural organizations of the Trade Union of Workers of Education and Science of Ukraine; inquiry into the receipt and the use of trade union dues paid by students to the trade union committee of the Nadvirnya technical college No. 11 in Ivano-Frankivsk; instruction given by the General Prosecutor's Office on 23 May 2011 to the FPU not to examine certain issues at the sitting of its presidium on 24 May 2011; and request by the Prosecutor's Office of the Bagliysky region of Dneprodzerzhynsk city in Dnepropetrovsk region addressed to the Chairperson of the trade union committee of the "Dnepr AZOT" to produce notarized copies of the trade union committee statutes, staff list and decisions adopted at trade union meetings between 2010 and 2011. The Committee once again requests the Government to ensure that the above allegations are investigated through independent inquiries and to keep it informed of the results of such inquiries.*

* * *

131. 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
1962 (Colombia)	November 2002	June 2008
2086 (Paraguay)	June 2002	November 2012
2096 (Pakistan)	March 2004	March 2011
2153 (Algeria)	March 2005	November 2012

Case	Last examination on the merits	Last follow-up examination
2173 (Canada)	March 2003	June 2010
2257 (Canada)	November 2004	October 2013
2304 (Japan)	November 2004	October 2013
2428 (Bolivarian Republic of Venezuela)	March 2006	October 2013
2528 (Philippines)	June 2012	October 2013
2533 (Peru)	June 2011	June 2013
2583 (Colombia)	June 2008	March 2010
2595 (Colombia)	June 2009	October 2013
2611 (Romania)	November 2008	October 2013
2694 (Mexico)	October 2013	–
2700 (Guatemala)	March 2010	March 2011
2712 (Democratic Republic of the Congo)	October 2013	–
2714 (Democratic Republic of the Congo)	October 2013	–
2716 (Philippines)	November 2010	–
2755 (Ecuador)	June 2010	March 2011
2768 (Guatemala)	October 2013	–
2820 (Greece)	November 2012	–
2827 (Bolivarian Republic of Venezuela)	March 2013	–
2836 (El Salvador)	November 2011	March 2013
2837 (Argentina)	March 2012	June 2013
2844 (Japan)	June 2012	October 2013
2848 (Canada)	June 2012	October 2013
2852 (Colombia)	November 2012	October 2013
2858 (Brazil)	November 2012	October 2013
2870 (Argentina)	November 2012	–
2872 (Guatemala)	November 2011	–
2895 (Colombia)	March 2013	–
2926 (Ecuador)	October 2013	–
2934 (Peru)	November 2012	–
2951 (Cameroon)	October 2013	–
2961 (Lebanon)	October 2013	–
2964 (Pakistan)	June 2013	–
2971 (Canada)	October 2013	–
2973 (Mexico)	October 2013	–
2980 (El Salvador)	June 2013	–
2983 (Canada)	October 2013	–
2985 (El Salvador)	October 2013	–
3006 (Bolivarian Republic of Venezuela)	October 2013	–

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

133. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 2225 (Bosnia and Herzegovina), 2291 (Poland), 2341 (Guatemala), 2384 (Colombia), 2400 (Peru), 2430 (Canada), 2434 (Colombia), 2450 (Djibouti), 2453 (Iraq), 2460 (United States), 2478 (Mexico), 2488 (Philippines), 2540 (Guatemala), 2602 (Republic of Korea), 2616 (Mauritius), 2637 (Malaysia), 2656 (Brazil), 2678 (Georgia), 2699 (Uruguay), 2706 (Panama), 2710 (Colombia), 2719 (Colombia), 2725 (Argentina), 2741 (United States), 2745 (Philippines), 2746 (Costa Rica), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2775 (Hungary), 2777 (Hungary), 2780 (Ireland), 2793 (Colombia), 2808 (Cameroon), 2812 (Cameroon), 2815 (Philippines), 2833 (Peru), 2838 (Greece), 2840 (Guatemala), 2843 (Ukraine), 2850 (Malaysia), 2860 (Sri Lanka), 2905 (Netherlands), 2907 (Lithuania), 2914 (Gabon), 2916 (Nicaragua), 2944 (Algeria), 2952 (Lebanon), 2966 (Peru), 2969 (Mauritius), 2972 (Poland), 2977 (Jordan), 2981 (Mexico) and 2991 (India), which it will examine at its next meeting.

CASE NO. 2979

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

Complaint against the Government of Argentina presented by the General Confederation of Labour of the Republic of Argentina (CGTRA)

Allegations: the complainant organization alleges interference by the administrative authorities in the election for the renewal of its officers, as well as acts of disqualification and interference in the organization's activities, demonstrating a clear anti-union policy against its secretary-general and the imposition of a very heavy fine on the National Federation of Truck Drivers and Workers in the Road Transport of Loads, Logistics and Services (FNTCOTACLS) for calling a general strike

134. The complaint is contained in communications of the General Confederation of Labour of the Republic of Argentina (CGTRA) dated 21 August 2012. The CGTRA presented new allegations in a communication dated 27 December 2012.

135. The Government provided its observations in communications dated October 2013 and 11 March 2014.

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

A. The complainant's allegations

137. In its communication of 21 August 2012, the CGTRA indicates that it is presenting a complaint against the Government for the violation of Convention No. 87 in the context of the procedure for the renewal of its officers, who were elected on 12 July 2012 for a period of four years (14 July 2012 to 14 July 2016), in accordance with its statutes. The complainant reports that the process of the renewal of its officers was undoubtedly the most pluralistic, democratic and transparent undertaken in recent years by the Confederation. The electoral process, initiated by the meetings of the executive council of 27 March and 24 April 2012, in accordance with the procedure set out in the statutes, was also approved by the Central Committee of the Confederation on 23 May that year.

138. The complainant indicates that, first, with regard to the quorum set out in the by-laws, the extraordinary general congress was constituted and 47 first-level organizations were affiliated. Then, in constant compliance with the precautionary measures and requirements set out in the by-laws, and to prevent gaps and interruptions in terms of office, the ordinary congress envisaged by the statutes was held for the renewal of the officers of the Confederation. The complainant emphasizes that over 1,000 participants at the congress, through a direct and secret ballot, elected the leadership of the CGTRA for a period of four years. The CGTRA alleges that the Government interfered in this electoral process, in violation of freedom of association and the independence of trade unions, and particularly the right to elect representatives in full freedom. According to the complainant, the interference extended to the highest levels of the executive authorities, which not only made public their preferences for candidates other than the secretary-general of the National Federation of Truck Drivers and Workers in the Road Transport of Loads, Logistics and Services (FNTCOTACLS), who was elected to guide the destiny of the Confederation, but also took the form of specific pressure on leaders and affiliates to withdraw their support. According to the CGTRA, this situation was denounced both before and after his re-election as secretary-general. The complainant adds that, despite the multiple requests made for a meeting, the President of the Nation did not receive the secretary-general.

139. The CGTRA claims that the Ministry of Labour, Employment and Social Security does not have the competence to intervene in the intra-union conflict in the Confederation, as the procedure set out in the Act respecting trade unions has not been exhausted (the complainant is referring to section 60, which provides that "without prejudice to the provisions of the statutes, the provisions of the previous section shall apply to disputes which may arise between affiliates of a trade union association of workers and the latter, or between a lower-level and a higher-level association". In this regard, section 59 provides that: "Before referring issues of trade union governance to the administrative authorities, the associations concerned shall have first exhausted the remedies available within the association, through a decision of the union organization of the level higher than the organization to which they are affiliated, or to which their federations are affiliated"). According to the CGTRA, the administrative authorities remedied weaknesses in the challenges made by the group of leaders who described themselves as being close to the Government, with the clear intention of intervening in and undermining the electoral process in the CGTRA. Accordingly, the independence of the organization was violated, in breach of its statutes and of jurisprudence, which has reiterated on numerous occasions that issues relating to trade union elections, particularly in the case of the most important trade union confederation in the country, shall be determined by the judicial authorities or an independent mediator without the intervention of the public authorities.

140. The complainant adds that the administrative decision of 6 July 2012, which concluded that "a sufficient and valid quorum had not been reached for the meeting of the executive council of the CGTRA on 24 April 2012, and that its procedure and decisions were

therefore null and void, and that the same body has to be reconvened to confirm the decisions taken or a new electoral process organized for the renewal of the officers", was drawn up prior to the meeting of the extraordinary congress of the Confederation on 12 July 2012. The CGTRA adds that only a few minutes after the arbitrary and unlawful decision referred to above had been issued, the authorities of the Ministry held a press conference in which they announced in public the decision taken by the Ministry, even though no final decision had been taken on the appeals that were before the National Directorate of Trade Union Associations, or the appeal to the higher authority that was to be decided by the Minister. The administrative action implied a political decision by the authorities to intervene in the election for the renewal of the officers of the CGTRA.

141. In its communication of 27 December 2012, the CGTRA alleges that the national Government is persisting in the unlawful and arbitrary acts of disqualification and interference in the life of the organization, thereby demonstrating a clear anti-union policy against the secretary-general, Hugo Antonio Moyano, as well as against other unions. The complainant reports that acts of vandalism and looting broke out in the provinces of Río Negro, Santa Fe and Buenos Aires on 20 and 21 December 2012, and that shortly after the looting began, as if the Government were pursuing a policy of persecution, government officials brought criminal charges against the trade union leaders Hugo and Pablo Moyano for a general strike called by the FNTCOTACLS. Even though the charges were set aside, the administrative labour authorities imposed a very heavy fine (of over 1 million pesos), without guaranteeing the right of legitimate defence. That decision has now been sent back to the labour administration, as Chamber X of the National Labour Court of Appeal found that the Minister of Labour had not complied with the necessary administrative procedures. According to the complainant, it can clearly be seen that the Government has a history of defamation and criminalization of union leaders that are critical of its action. The complainant also alleges that on 21 December 2012 the authorities of the Ministry of National Security accused Hugo Moyano and Pablo Micheli of excesses which resulted in two fatal victims, and that the Chief of the Cabinet of Ministers of the National Government implicated various unions. In this case, the public statements gave rise to a forceful riposte from the workers' movement in a press conference, in which it was emphasized that the purpose of the defamation through the press was clearly to intimidate union leaders who were engaged in a plan of action to combat the Government's economic and social policy.

B. The Government's replies

142. In its communication of October 2013, the Government denies each and every denunciation contained in the complaint and reaffirms that the claims are false and reckless. The Government emphasizes that it is not a question of partiality, but that the Ministry of Labour acted in defence of international guarantees which had objectively been prejudiced through failure to comply with clear statutory provisions, and which resulted in the exclusion of the representatives of important organizations from the executive council of the CGTRA. The claim that international standards have been violated is therefore unfounded. Indeed, on the contrary, the Ministry of Labour acted in defence of the principles of freedom of association and of international treaties against those infringing them.

143. The Government totally refutes the accusation that the State's action amounts to a violation of Articles 3 and 6 of Convention No. 87, and reaffirms that the Ministry acted at the request of one party whose international and constitutional guarantees had been prejudiced, through what may be summarized as violations of the right of expression, equality before the law and the exercise of the right to vote. In other terms, it was an objective case of exclusion of union representatives of affiliates from the leadership of the CGTRA, in a context of politicization of the electoral process, in which one party had the intention of

taking over the leadership of the CGTRA for its own political purposes, irrespective of the objectives of the Confederation, as set out in its statutes, and even in violation of international provisions respecting union activities. The Government provides a transcription of the report of the National Directorate of Trade Union Associations (file No. 1511236/12 of 6 July 2012), which indicates that it is examining an application for the absolute and irrevocable invalidation of the meeting of the executive council of the CGTRA which approved the convening of the Central Committee of the Confederation on 23 May 2012 and the ordinary and extraordinary national congresses on 12 July 2012. The application was lodged by various unions, which claimed that the executive council did not on that occasion achieve the necessary quorum for the meeting to be valid, in accordance with clause 50 of the statutes. It adds that various participants at the meeting did not fulfil the statutory requirements to represent their respective unions. Investigation showed that the quorum was not reached at the meeting of the executive council of the CGTRA on 24 April 2012, which could not therefore be considered valid, resulting in the procedure and the decisions taken by the meeting being null and void, with the need for the same body to meet again to confirm its decisions or a new electoral procedure to be held for the renewal of the officers.

144. The Government recalls that in the present case the complainant was not acting as a mere association, but that during the electoral period it exercised jurisdictional functions, such as resolving the intra-union differences relating to the election process (section 60 of Act No. 23551) and in the executive council, safeguarding the whole electoral process and guaranteeing impartiality, transparency and objectivity. However, the very terms in which the complaint is couched illustrate the lack of awareness of the role that has to be played by the officers of a union during an election. Those who exercise institutional responsibility during ballots have to demonstrate an impartial attitude, irrespective of the positions that are adopted during the campaign. The conduct of the complainant was in breach of the principles of "impartiality and transparency" in two respects: first, the use of the machinery of the Confederation in support of a specific position during the process, and second the disqualification of opponents. The Government adds that the statutes of the CGTRA set out clearly that the union organizations represented on the executive council are those which elect representatives to the executive council through their constituent bodies, and that this requirement was not met. The facts are clear in this respect, and none of the six candidates who stood in the absence of the real members of the executive council produced any documentation from the organizations they claimed to represent, as required by the statutes of the Confederation. In other words, there were six persons without any documentation in support of their presence as members of the executive council, as required by the statutes of the CGTRA. The Government observes that the dispute which arose in the CGTRA first had to be addressed within the Confederation through the establishment, in accordance with sections 59 and 60 of Act No. 23551, of an ad hoc tribunal for that purpose, which would discharge jurisdictional functions within the competence of the State. In so doing, the union is under the obligation to comply with the constitutional guarantees and the provisions of international treaties. The Government adds that the complaint reveals a "lack of respect" for rivals, with the continual disqualification of representatives of sectors that could be seen as dissident by the leadership of the faction wishing to convene an election. Dissidence should not be considered to be an attack justifying the disqualification of those concerned from standing in the election.

145. The Government adds that the Ministry of Labour took action at the request of one of the parties. A series of union organizations requested the Ministry to do so on the grounds of a flagrant violation of the organization's statutes. The Government reaffirms that the Ministry's action is legitimized by virtue of two sets of rules: international public labour law and international labour standards. The Ministry of Labour took action under legitimate circumstances, because there were violations of the principles governing the building of a common position in an association, the disqualification of opponents,

breaches of the rules of due process, as well as of democratic rules and other guarantees of the exercise of freedom of association. According to the Government, this is fully borne out by the findings of the report of the National Directorate of Trade Union Associations in case No. 1511236/12. The Government provides details of the actions of the complainant which were identified as void and wrongful: (1) the violation of clauses 11, 55(e) and 108 of the by-laws through failure to comply with the requirements for the formal convening of ordinary and extraordinary national congresses, including those intended for elections to renew the officers of the CGTRA; (2) the violation of trade union independence by preventing the contesting organizations, which were members of the executive council, from nominating their representatives for the meeting of 24 April 2012, in breach of clauses 49 and 53 of the statutes; (3) a discriminatory attitude, by challenging the complaint lodged by the contesting organizations through a specific statement dismissing their claims prior to the beginning of the process at the union headquarters – sections 59 and 60 of Act No. 23551; and (4) the failure to convene correctly the Central Committee of the Confederation on 23 May 2012 and the ordinary and extraordinary congresses, set for 12 July 2012. The situation as a whole makes it difficult to validate an election process.

146. The Government adds that at all times the Ministry of Labour endeavoured to ensure compliance with existing requirements, as illustrated by the meeting held in the Ministry of Labour, but without success. The lack of agreement during the meeting convened by the Ministry demonstrated political conduct which perverted the electoral process, by seeking to impose requirements that were in breach of natural individual and union safeguards, as the politicization of the statutory governance bodies, in the middle of an electoral process, prevented it from being considered objective and transparent. The Government indicates that in reality the complainant was endeavouring to take over the electoral process for its own political ends.

147. The Government reports that the intra-union dispute is currently before the courts, to which the action taken by the administration has been referred. The case is before Chamber V of the National Labour Court, entitled: *Ministry of Labour* v. *Armando Cavalieri et al., Secretaries-General of union organizations affiliated to the CGTRA, under the Act respecting trade unions*, Case No. 55910/12. This means that oversight over the action taken by the administration is being exercised by the courts, which are the appropriate instances to safeguard the interests of the parties, and the courts will decide on the relevance, merits and legality of the action taken by the Ministry.

148. In its communication of 11 March 2014, the Government refers to the latest allegations made by the complainant organization in December 2012. The Government points out that although the complainant refers to the events which occurred on 20 and 21 December 2012, those were actually the outcome of a process which started earlier and is, as already mentioned, characterized by blockades, pickets and intimidation of all kinds. As pointed out by some newspapers dated 20 June 2012, the truck drivers' union – which is part of the set of unions that the complainant organization claims to represent – ordered a work stoppage of 72 hours in the fuel distribution sector, and was, in light of the circumstances, requested to immediately cease industrial action, as also reported by the newspapers. In addition to ignoring the mandatory conciliation, the union in question proceeded to block several production plants or fuel distributors. According to the Government, the State was subjected in this context to ongoing acts of violence endangering the lives and safety of persons, and, as a result of this situation, the Government initiated two lawsuits over these incidents which are pending before the courts. The Government further states that, as noted by the newspaper reports, a fine was imposed on the union for ignoring the mandatory conciliation during the dispute, and the related judicial proceedings are also ongoing. On 21 November 2012, industrial action was taken once again in the form of pickets and blockades of all entries of the city of Buenos Aires. These circumstances led to the measures adopted in December mentioned by the complainant. The events of

December 2012 are the consequence of a constant and recurring performance of acts of threats for six months, and the statement of the public officials must be understood in that context.

C. The Committee's conclusions

149. *The Committee observes that in the present case the complainant alleges that the administrative authorities interfered in the electoral procedures of the General Confederation of Labour of the Republic of Argentina (CGTRA), which were carried out in compliance with the statutory procedure, resulting in the election on 12 July 2012 of new officers for a period of four years (the complainant organization objects to the intervention of the administrative authorities, which found that the quorum had not been reached in the executive council of the CGTRA and decided that the council should be reconvened to confirm the decisions taken or a new election procedure organized). The Committee also observes the allegation by the CGTRA that: (1) the interference extends to the highest level of the executive authority and is not limited to public expressions of preference for a candidate but also consists in placing pressure on trade union leaders and affiliated organizations; and (2) the government authorities engaged in conduct intended to invalidate and interfere in the activities of the organization, thereby demonstrating a clear anti-union policy against the secretary-general, Hugo Moyano, and other leaders (according to the CGTRA, criminal charges were brought against Hugo and Pablo Moyano for calling a general strike decided upon by the National Federation of Truck Drivers and Workers in the Road Transport of Loads, Logistics and Services (FNTCOTACLS) in December 2012 and, even though the criminal charges were set aside, a very heavy fine, amounting to over 1 million pesos, was imposed by the administrative authorities).*

150. *With regard to the allegation of interference by the administrative authorities in the electoral process of the CGTRA (the complainant criticizes the intervention by the administrative authorities which found that the quorum had not been reached in the executive council of the CGTRA and decided that the council should be reconvened to confirm the decisions taken or a new election procedure organized), the Committee notes the Government's statements that: (1) the Ministry of Labour, Employment and Social Security acted in defence of international guarantees which had objectively been prejudiced through failure to comply with clear statutory provisions, and which resulted in the exclusion of the representatives of important organizations from participation in the executive council of the CGTRA; (2) the action taken by the Ministry was at the request of one of the parties in light of violations of international and constitutional guarantees, which may be summarized as the violation of the right of expression, equality before the law and the exercise of the right to vote; (3) it was an objective situation involving the exclusion of representatives of unions from the leadership of the CGTRA; (4) the Ministry of Labour took action under legitimate circumstances, as there were violations of the principles governing the building of a common position in an association, the disqualification of opponents, breaches of the rules of due process, as well as of democratic rules and other guarantees of the exercise of freedom of association; and (5) the intra-union dispute is currently before the courts, to which the action taken by the administration has been referred (the case is before Chamber V of the National Labour Court, under the title of: Ministry of Labour* v. *Armando Cavalieri et al., secretaries-general of unions affiliated to the CGTRA, under the Act respecting trade unions), and it is the court that will decide on the relevance, merits and legality of the action taken by the Ministry of Labour. While noting all this information, the Committee recalls that:*

The right of workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining the conditions of eligibility of leaders or in the conduct of the elections themselves.

Measures taken by the administrative authorities when election results are challenged run the risk of being arbitrary. Hence, and in order to ensure an impartial and objective procedure, matters of this kind should be examined by the judicial authorities.

[See ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 391 and 440.] Under these conditions, the Committee firmly expects that the judicial authorities will rule without delay on all the pending matters relating to the electoral process in the CGTRA and requests the Government to keep it informed in this respect.*

151. *With regard to the new allegations of December 2012, according to which the Government authorities engaged in acts of disqualification and interference in the activities of the organization, thereby demonstrating a clear anti-union policy against the secretary-general, Hugo Moyano, and other leaders (according to the CGTRA, criminal charges were brought against Hugo Moyano and Pablo Moyano for a general strike called by the FNTCOTACLS in December 2012, and even though the criminal charges were set aside, the administrative authorities imposed a very heavy fine, amounting to over 1 million pesos, which is before the administrative authorities), the Committee notes that the Government indicates that: (i) the events which occurred on 20 and 21 December 2012 were the outcome of a process characterized by work stoppages in the fuel distribution sector as well as pickets, blockades and intimidation, which started earlier; (ii) on 20 June 2012, the truck drivers' union called for a work stoppage of 72 hours in the fuel distribution sector, and was, in light of the circumstances, requested to immediately cease industrial action; (iii) in addition to ignoring the mandatory conciliation, the union in question proceeded to block several production plants or fuel distributors, and the State was subjected to ongoing acts of violence endangering the lives and safety of persons; (iv) as a result of this situation, the Government initiated two lawsuits over these incidents which are pending before the courts, and a fine was imposed on the union for ignoring the mandatory conciliation during the dispute, with the related judicial proceedings also ongoing; and (v) the events of December 2012 are the consequence of a constant and recurring performance of acts of threats for six months, and the statements of the public officials must be understood in that context. Under these circumstances, highlighting the delay in the ongoing proceedings relating to the events of 2012, the Committee requests the Government to keep it informed of the outcome of the relevant judicial proceedings.*

152. *Lastly, regarding the allegations concerning the authorities' interference by publicly expressing their preference for candidates participating in the CGTRA's election process, as well as the pressures and threats to leaders and affiliated organizations, the Committee notes that the Government states that it is not a question of partiality and that the Ministry of Labour acted in defence of international guarantees which had been prejudiced and due to the breach of CGTRA's statutory requirements. In that regards, the Committee recalls that in general "when the authorities intervene during the election proceedings of a union, expressing their opinion of the candidates and the consequences of the election, this seriously challenges the principle that trade union organizations have the right to elect their representatives in full freedom" [see* ***Digest****, op. cit., para. 434].*

The Committee's recommendations

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

(a) Recalling the importance of respecting the principles concerning the non-interference of the authorities in trade union elections mentioned in the conclusions, the Committee firmly expects that the judicial authorities will rule without delay on all the pending matters relating to the electoral process in the CGTRA. The Committee requests the Government to keep it informed in this respect.

(b) The Committee requests the Government to keep it informed of the outcome of the ongoing judicial proceedings initiated on the grounds of the events occurred during the general strike called by the National Federation of Truck Drivers and Workers in the Road Transport of Loads, Logistics and Services (FNTCOTACLS) in December 2012, as well as of the outcome of the judicial proceedings concerning the imposition of a fine on the FNTCOTACLS, for not having complied with the mandatory conciliation in the framework of the relevant dispute.

CASE NO. 2987

INTERIM REPORT

Complaint against the Government of Argentina presented by
– the Trade Union Association of Subway and Light Rail Workers (AGTSyP) and
– the Confederation of Workers of Argentina (CTA)

Allegations: The complainant organizations challenge the decision of the administrative labour authority of the Government of the City of Buenos Aires to summon to compulsory conciliation proceedings the parties to a dispute in the subway sector and the imposition of a fine on AGTSyP for failing to respond to the summons

154. The complaint is contained in communications from the Trade Union Association of Subway and Light Rail Workers (AGTSyP) and the Confederation of Workers of Argentina (CTA), dated 22 and 24 August 2012, respectively.

155. The Government sent its observations in a communication dated September 2013.

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

A. The complainants' allegations

157. In their communications of 22 and 24 August 2012, the AGTSyP and the CTA indicate that the AGTSyP is a first-level trade union for the workers of the Buenos Aires subway transport service. They also state that a concession of this public service was granted more than 20 years ago to a private company (Metrovías SA), which currently employs the workers represented by the AGTSyP. The complainants add that although the employer is a private company, its activities are regulated and directed by the State (the complainants are referring to the State's transfer to the Autonomous City of Buenos Aires of the concession of the subway network of that city).

158. The complainant organizations report that following the unsuccessful negotiation of certain working conditions under the collective agreement in force and of a salary adjustment request for 2012, and the company's declaration that it was unable to meet the demands due to lack of funds, a strike was declared on 3 August and ran from 4 to 13 August 2012.

159. The complainant organizations indicate that in this context, a legislator of the Autonomous City of Buenos Aires filed *amparo* proceedings before the courts and the judge ordered the Office of the Undersecretary of Labour of the Government of the City of Buenos Aires (GCBA) to call the subway workers' representatives to negotiations with the company Metrovías SA, to enable both parties to reconcile their respective interests and thus bring an end to the dispute. According to the complainants, the court's decision did not mention the suspension of the exercise of the right to strike nor the application of the regime of compulsory conciliation. However, the complainants report that the Office of the Undersecretary of Labour of the GCBA issued Administrative Decision No. 1015/SSTR/2012 of 9 August 2012, ordering the workers to abandon all direct action. The complainants indicate that AGTSyP lodged an action for reconsideration with a subsidiary appeal against the decision, under the local administrative procedural system.

160. The complainants add that the AGTSyP appeared before the Office of the Undersecretary of Labour of the GCBA for negotiations on 9 August, at which time the negotiations resumed. On 10 August, it was indicated that the administrative labour authority of Buenos Aires was not an impartial body and should therefore not intervene in collective labour disputes involving subway workers. Notwithstanding, they expressed their willingness to proceed on the basis of voluntary participation, in line with the court decision, to find a solution to the dispute. The complainants also state that immediately after issuing Administrative Decision No. 1015/SSTR/2012, which has been the subject of various appeals, the Buenos Aires authorities issued Administrative Decision No. 1016/SSTR/2012 of 11 August 2012, imposing a fine of 4,933,000 Argentina pesos (ARS) on AGTSyP for non-compliance with Administrative Decision No. 1015/SSTR/2012 and with the compulsory conciliation proceedings. According to the complainants, confirmation of this fine would result in the economic liquidation of the trade union. Likewise, the complainants add that public prosecutors have filed complaints, which are ongoing, and that the GCBA has applied to the National Ministry of Labour, Employment and Social Security and the National Labour Court for the withdrawal of the legal personality of the AGTSyP.

B. The Government's reply

161. In its communication dated September 2013, the Government transcribes the main parts of the reply sent by the GCBA. It indicates that National Decree No. 2608/93 granted the concession for underground passenger rail services for the City of Buenos Aires to the company Metrovías SA. The workers at the enterprise belong to two trade union associations: the Automotive Tramway Union (UTA), which is a first-level trade union association with legal personality (in other words, in keeping with Act No. 23551

concerning trade union associations, one of its exclusive rights is the right to participate in collective bargaining) and the AGTSyP, which is an association that is simply registered. It recalls that section 1 of Act No. 14250 provides that collective agreements concluded with a trade union association with legal personality are governed by the provisions of the Act and section 13 provides that the National Ministry of Labour, Employment and Social Security is the authority responsible for implementing the Act.

162. The Government adds that during the years of coexistence of the UTA and AGTSyP trade union associations, the authority responsible for the implementation of collective agreements, and in the event of collective labour disputes, has been the National Ministry of Labour, Employment and Social Security. According to the Government, in the context of negotiations between the parties, a collective dispute arose on 2 August 2012 and the AGTSyP specifically requested the intervention of the administrative labour authority of the GCBA. The Government indicates that through its own actions the AGTSyP has recognized the authority of the Office of the Undersecretary of Labour of the GCBA.

163. The Government states that irrespective of the request made by the AGTSyP, the intervention of the administrative authority of the GCBA occurred in accordance with the legal decision handed down by Administrative and Tax Court No. 6 of the Autonomous City of Buenos Aires in the case of *Lubertino Beltrán and María José* v. *GCBA and others* regarding protection of constitutional trade union rights *(amparo)*. The officiating judge ordered the Office of the Undersecretary of Labour of the GCBA to convene the subway workers' representatives to negotiations with the company to enable both parties to reconcile their respective interests and thus bring an end to the dispute. On 9 August 2012 the Office of the Undersecretary of Labour was informed of the legal ruling and in compliance with the ruling it convened all the parties to a hearing. Following seven hours of intense debate, the meeting concluded and the Office of the Undersecretary of Labour ordered compulsory conciliation through Administrative Decision No. 1015/SSTR/2012 in order to resolve the conflict.

164. The Government states that under this procedure an agreement was concluded between the UTA (trade union association with legal personality) and the enterprise, which consisted of an increase in the basic salary on the salary scale, in line with the definitive conditions to be agreed. The Government states that the AGTSyP did not comply with the compulsory conciliation and instead continued the industrial action for a period of ten days. Consequently, and in accordance with the powers vested in it under the law (Act No. 245), the administrative authority issued Administrative Decision No. 1016/SSTR/2012, imposing on the trade union association the legally stipulated fine. The Government notes that the fine was not enforced. The Government stresses that the administrative labour authority, in issuing Administrative Decision No. 1015/2012, did not stipulate the provision of minimum services, but underlined in its whereas clauses the critical importance of the subway and light rail service. Lastly, the Government states that it is clear that the administrative labour authority of the GCBA acted in conformity with the prevailing legislation, with the instructions of the officiating judge and with the request made by the AGTSyP.

C. The Committee's conclusions

165. *The Committee observes that, in this case, the complainant organizations indicate that following the unsuccessful negotiation of certain working conditions and of a salary adjustment for workers in the subway sector of the City of Buenos Aires, a strike was declared and held from 4 to 12 August 2012, and that although the courts only ordered the Office of the Undersecretary of Labour of the GCBA to summon the subway workers' representatives to negotiations with the representatives of the company Metrovías SA with a view to putting an end to the conflict, the administrative authorities exceeded their remit*

and issued Administrative Decision No. 1015/SSTR/2012 of 9 August 2012 ordering the workers to abandon all industrial action. The Committee also notes that the complainant organizations allege that, although the AGTSyP filed administrative appeals against the abovementioned decision, and appeared before the Office of the Undersecretary of Labour of the GCBA under the abovementioned framework of negotiations on 9 August – indicating that it did not consider that the administrative labour authority of the City of Buenos Aires was an impartial body and should therefore not intervene in disputes – resuming negotiations at that time, the authorities of the City of Buenos Aires issued Administrative Decision No. 1016/SSTR/2012 of 11 August 2012, imposing a fine of ARS4,933,000 on the AGTSyP for non-compliance with Administrative Decision No. 1015/SSTR/2012 and the compulsory conciliation proceedings (in addition, according to the complainants, public prosecutors have filed complaints on these grounds, which were ongoing, and the GCBA has applied to the National Ministry of Labour, Employment and Social Security and the National Labour Court for the withdrawal of the legal personality of the AGTSyP).

166. *As regards the challenged summons to compulsory conciliation proceedings of the parties to the dispute (the company Metrovías SA and the AGTSyP) under Administrative Decision No. 1015/SSTR/2012 (the AGTSyP did not consider that the administrative labour authority of the City of Buenos Aires was an impartial body), the Committee notes the Government's statement that the GCBA indicated that: (i) the workers at the enterprise belong to two trade union associations: the UTA, which is a first-level trade union association with legal personality (in other words, in keeping with Act No. 23551 concerning trade union associations, one of its exclusive rights is the right to participate in collective bargaining) and the AGTSyP, which is an association that is simply registered; (ii) during the years of coexistence of the UTA and AGTSyP, the authority responsible for the implementation of collective agreements and in the event of collective labour disputes has been the National Ministry of Labour, Employment and Social Security; (iii) in the context of the negotiations between the parties, a collective dispute arose on 2 August 2012 and the AGTSyP specifically requested the intervention of the administrative labour authority of the GCBA; (iv) through its own actions the AGTSyP has recognized the authority of the Office of the Undersecretary of Labour of the GCBA; (v) irrespective of the request made by the AGTSyP, the intervention of the administrative authority of the GCBA occurred in accordance with the legal decision handed down by Administrative and Tax Court No. 6 of the Autonomous City of Buenos Aires in the case of* Lubertino Beltrán and María José *v.* GCBA and others *regarding protection of constitutional trade union rights* (amparo)*; (vi) the officiating judge ordered the Office of the Undersecretary of Labour of the GCBA to convene the subway workers' representatives to negotiations with the company to enable both parties to reconcile their respective interests and thus bring an end to the dispute; (vii) on 9 August 2012, the Office of the Undersecretary of Labour of the GCBA, in order to comply with the order handed down by the judicial authority, convened all the parties to a hearing and following seven hours of intense debate the meeting concluded and the Office of the Undersecretary of Labour ordered compulsory conciliation through Administrative Decision No. 1015/SSTR/2012 in order to resolve the conflict; (viii) under this procedure an agreement was concluded between the UTA (trade union association with legal personality) and the enterprise; and (ix) the AGTSyP did not comply with the compulsory conciliation and instead continued the industrial action for a period of ten days.*

167. *Recalling that "a decision to suspend a strike for a reasonable period so as to allow the parties to seek a negotiated solution through mediation or conciliation efforts, does not in itself constitute a violation of the principles of freedom of association" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 550], the Committee requests the Government to keep it informed of the outcome of the action for reconsideration with a subsidiary appeal which, according to the*

complainants, was filed against Administrative Decision No. 1015/SSTR/2012 ordering compulsory conciliation proceedings.

168. *Furthermore, with respect to Administrative Decision No. 1016/SSTR/2012 of 11 August 2012, imposing a fine of ARS4,933,000 (approximately US$900,000) on AGTSyP for non-compliance with Administrative Decision No. 1015/SSTR/2012 and with the compulsory conciliation proceedings, the Committee observes the statement by the GCBA that: (i) the AGTSyP did not comply with the compulsory conciliation and instead continued the industrial action for a period of ten days; (ii) consequently, and in accordance with the powers vested in it under the law, the administrative labour authority imposed on the trade union association the legally stipulated fine; (iii) the fine in question was not enforced. In this respect, the Committee recalls, in a general manner, the importance of sanctions in the event of failure to observe the legal requirements for a strike (which are in conformity with the principles of freedom of association) being commensurate with the transgression in question, and requests the Government to indicate whether the administrative decision imposing the fine has been withdrawn.*

169. *Lastly, the Committee requests the Government to send its observations without delay regarding the allegations that prosecutors (representatives of the Public Prosecutor's Office) have filed complaints in relation to this dispute, which are ongoing, and that the GCBA applied to the National Ministry of Labour, Employment and Social Security and the National Labour Court for the withdrawal of the legal personality of the AGTSyP.*

The Committee's recommendations

170. ***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 keep it informed of the outcome of the action for reconsideration with a subsidiary appeal which, according to the complainants, was brought against Administrative Decision No. 1015/SSTR/2012 ordering compulsory conciliation proceedings in a dispute in the Buenos Aires subway sector.

(b) The Committee requests the Government to indicate whether Administrative Decision No. 1016/SSTR/2012 of 11 August 2012 imposing the fine on the AGTSyP has been withdrawn.

(c) The Committee requests the Government to send its observations without delay regarding the allegations that prosecutors (representatives of the Public Prosecutor's Office) have filed complaints in relation to this dispute, which are ongoing, and that the GCBA has applied to the National Ministry of Labour, Employment and Social Security and the National Labour Court for the withdrawal of the legal personality of the AGTSyP.

CASE NO. 2882

INTERIM REPORT

Complaint against the Government of Bahrain presented by
– the International Trade Union Confederation (ITUC) and
– the General Federation of Bahrain Trade Unions (GFBTU)

Allegations: The complainants allege serious violations of freedom of association, including massive dismissals of members and leaders of the GFBTU following their participation in a general strike, threats to the personal safety of trade union leaders, arrests, harassment, prosecution and intimidation, as well as interference in the GFBTU's internal affairs

171. The Committee last examined this case at its March 2013 meeting, when it presented an interim report to the Governing Body [see 367th Report, paras 181–212, approved by the Governing Body at its 317th Session].

172. The Government sent its observations in communications dated 16 September and 7 October 2013.

173. Bahrain has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

174. At its March 2013 meeting, the Committee made the following recommendations [see 367th Report, para. 212]:

(a) The Committee requests the Government to continue to keep it informed of the progress made to resolve all remaining cases of dismissals following the events of February and March 2011.

(b) The Committee requests the Government to provide a copy of the Code of Conduct and Ethics of the Bahrain police and to provide information on the training to sensitize police officers, including as regards how many officers have been trained, the frequency of the training and the content.

(c) The Committee urges the Government to conduct an inquiry without delay into the specific allegations made about a media campaign in 2011 against the GFBTU, and the communication allegedly issued by the Joint Committee of Major Companies so as to clarify the facts and ensure that the results of any threats or harassment are remedied. It requests the Government to keep it informed of developments in this regard.

(d) The Committee expects the Government to expedite the investigations into the allegations of torture and ill-treatment of Abu Dheeb and Jalila al-Salman so as to clarify the facts and punish those responsible, should the allegations prove to be true, and urges the Government to inform it of the outcome of these investigations without delay. Regretting that the Government has provided no information on the steps taken to provide necessary medical attention to Abu Dheeb, the Committee urges it to ensure that

he immediately receives any necessary medical attention and to keep it informed of the steps taken in this regard.

(e) The Committee urges the Government to provide detailed information on the charges brought against Abu Dheeb and Jalila al-Salman and copies of the court judgments concerning their cases. Observing that Abu Dheeb is still serving his sentence, the Committee requests the Government to ensure that he is immediately released should it be found that he has been detained for the exercise of legitimate trade union activity.

(f) The Committee requests the Government to take steps to amend the Trade Union Act, in full consultation with the social partners concerned, so as to clarify that general labour federations may be formed freely.

(g) Recalling its previous conclusions concerning the provision in the Trade Union Act, banning from trade union office, persons held responsible for violations leading to the dissolution of a trade union or its executive body, and particularly that this provision should not be susceptible to being used for convictions related to the exercise of legitimate trade union activity of peaceful demonstration, the Committee requests the Government to review this provision with the social partners concerned, with a view to its amendment, so as to ensure that workers may elect their representatives free from government interference.

(h) The Committee urges the Government to take concrete steps without delay, in full consultation with the social partners concerned, with a view to amending the Trade Union Act and the Prime Minister's Decision No. 62 of 2006 in line with its recommendations in Cases Nos 2433 and 2522. The Committee further requests the Government to indicate the manner in which the freedom of association rights of domestic workers are ensured. Recalling the emphasis placed on the freedom of association of domestic workers in the Domestic Workers Convention, 2011 (No. 189), the Committee invites the Government to consider the possibility of ratifying this Convention.

(i) The Committee requests the Government to continue to keep it informed of any developments in its consideration of the ratification of Conventions Nos 87 and 98 and invites the Government to avail itself of ILO technical assistance to support training and capacity building of the relevant partners for the promotion of the principles embodied in these Conventions.

(j) Noting with deep concern the new allegations of violations of freedom of association, the Committee requests the Government to provide its observations thereon without delay.

175. The additional allegations provided by the ITUC and the GFBTU, in the communication dated 14 February 2013, just prior to the previous examination of the case, concerned:

– the failure on the part of the Government to implement the tripartite agreement of 2012, the Committee on Freedom of Association recommendations and the recommendations made in the Bahrain Independent Commission of Inquiry (BICI) report;

– the imprisonment, without a fair trial, of Mehdi Abu Dheeb, President of the Bahrain Teachers' Association (BTA) and his mistreatment in detention;

– further restrictions introduced to limit freedom of assembly and expression, in the regulations on rallies and demonstrations;

– labour law amendments facilitating arbitrary dismissal (section 111 of Labour Law No. 36 of 2012);

– financial and political backing for an alternative, government-backed, sectarian-based rival federation, the Bahrain Labour Union Free Federation (BLUFF);

– the preparation of legislation to criminalize strikes and legalize retaliation measures against strikers;

– measures taken to replace the GFBTU with the BLUFF in tripartite committees;

– a defamation campaign against the GFBTU, spearheaded by the BLUFF leadership with the participation of pro-government parliament members and columnists, accusing the GFBTU of treason, defaming Bahrain's image and abiding to a foreign agenda, including references to the ILO and the ITUC. Requests for Government action have allegedly been met with demands that the ILO complaint be withdrawn.

176. The GFBTU further provided detailed allegations concerning anti-union acts by a number of enterprises:

– Aluminium Bahrain (ALBA): punitive measures taken by the management with respect to workers who were establishing an alternative union to the BLUFF, resulting in the dismissal of Hussain Ali Al-Radi, Vice-President of the founding committee, Abdel Menhem Ahmad Ali, Secretary, and Nader Mansour Yaakoub, founding committee member. The Ministry of Labour has refused to respond to the grievances they have made. Following the first founding Congress, the union's Secretary-General, Yousif al Jamri, was demoted and punitive measures were taken against executive board members Abdallah Chaaban and Mohamad Achour. Membership dues continue to be transferred to the management-backed union, despite the withdrawal of 500 workers, and the management refuses to recognize and meet the trade union leaders of the newly formed union.

– Bahrain Airport Services (BAS): the company refuses to restore the check-off system for union dues, forcibly shutting the union office, unilaterally taking over the management of the savings fund, refusing to respond to GFBTU calls for dialogue and negotiation, while meeting regularly with the BLUFF-affiliated union. Yousuf Alkhaja, President of the BAS trade union, has still not been reinstated. Moreover, Governing Body member Abdullah Hussein's airport access permit has not been renewed due to his trade union work.

– Arab Shipbuilding and Repair Yard (ASRY): the trade union's representation on joint committees has been cancelled, while management supports the establishment of a rival union affiliated to the BLUFF. Migrant workers have been pressured to withdraw from the GFBTU-affiliated union and affiliate with the BLUFF union.

– Aluminium Rolling Mill: the unilateral cancellation of facilities provided to the Aluminium Rolling Mill Workers' trade union for a full-time president; management has provided support for the creation of a rival union; intimidation and pressure placed on migrant workers to withdraw from the GFBTU-affiliated union and affiliate to the rival management-supported union; favouritism towards the rival union by according free time to its president; the unilateral ending of the collective bargaining process; and the unilateral reduction of privileges obtained through collective agreements.

– Bahrain Telecommunications Company (BATELCO): the absence of dialogue on the part of the management with respect to mass dismissals; the freezing of the joint union–management committee under the pretext of confusion due to the recent trade union plurality; the unilateral withdrawal of trade union privileges; and the placing of all three unions at the workplace on an equal footing, despite the representativeness of the GFBTU.

– Bahrain Petroleum Company (BAPCO): the management has unilaterally put in place an alternative negotiation mechanism replacing a decade-old agreed mechanism; three trade union board members remain suspended; the trade union office at Jabal Camp has been demolished; all trade union offices have been locked up by management; documents have been confiscated from the Awali office; management issued a circular calling on workers to withdraw their membership from the GFBTU-affiliated union; and all facilities previously granted to the union have been cancelled by management.

– Gulf Air: the management dismissed Hussein Mehdi, the GFBTU-affiliated union board member, under the pretext that he was divulging work secrets. Management sent an email asking workers if they wanted to remain members of the GFBTU-affiliated union.

– Yokogawa Middle East: management refuses to hold negotiation meetings with the trade union and refuses to delegate its representatives to attend a meeting with the Ministry of Labour to resolve these issues. The President of the union has been transferred and harassed in reprisal for his trade union work and he has not been granted full-time trade union status to enable him to carry out his representative functions.

– Bahrain Aviation Fuelling Company (BAFCO): the re-dismissal of the trade union president, Abdul Khaleq Abdul Hussain, in January 2013, after having transferred him to a job without any specific tasks. All his attempts to rectify the situation were ignored.

– The continued refusal to reinstate: former board member of the Banks trade union, Ayman Al Ghadban; the President of the trade union at KANOO cars, Hassan Abdul Karim; and board members of Sphynx trade union for cleaning.

177. Finally, the GFBTU alleges that government-controlled newspapers have been propagating hostility against the ILO and that the Government had banned certain ILO officials from entering the country.

B. The Government's reply

178. In its communication dated 16 September 2013, the Government recalls the steps it has taken to implement the tripartite agreement of March 2012, adding that, since February 2013, a small number of additional cases (12) have been resolved. According to the Government, the remaining unresolved cases (49 of 4,624) are either pending in court and/or pending the decision of a worker to accept the re-employment or other resolution offered.

179. In reply to the Committee's recommendations, the Government transmitted the Code of Conduct and Ethics of the Bahrain police, adopted by Ministerial Resolution No. 12 of 30 January 2012. In addition, the Government provides information on the steps taken to implement the recommendation in the BICI report with regard to the establishment of a police ombudsman to investigate allegations of police misconduct and concerning the follow-up given to police training, including training new recruits in human rights and other courses on international human rights law were given to commissioned and non-commissioned officers. The Government estimates that additional human rights training will be provided to another 400 officers and 1,800 personnel. Supervision of the jails and detention centres is carried out by the courts and Public Prosecution, while independent monitoring is undertaken by the International Committee of the Red Cross (ICRS) under a Memorandum of Understanding signed on 8 December 2011. Additionally, the new Police

Ombudsman is in the process of establishing a separate directorate to make announced and unannounced visits.

180. As regards the allegation of a media campaign against the GFBTU, the Government indicates that it has seriously reviewed this allegation but points out that no evidence indicative of such a campaign has been provided. The Government states that it permits freedom of the press, and news outlets routinely publish unflattering stories and offensive allegations against many Bahrainis. At the same time, there have also been media stories supportive of the GFBTU. The Government concludes that no further action can be taken on this matter absent some evidence provided to demonstrate such a targeted media campaign. As regards the 12 June 2011 communication by the Joint Committee of Major Companies proposing possible legal action against the GFBTU, the Government reiterates that it did not support such action, which in the end was not taken.

181. The Government also refers to the setting up of the Special Investigation Union (SIU) by Decision No. 8 of the Attorney General on 27 February 2012, which has the responsibility of determining the criminal liability of government officials. The SIU has initially prioritized 46 cases of death referred to it, 12 cases of which led to criminal referrals and the prosecution of members of the security forces, and a number of convictions and prison sentences. The SIU is also handling more than 100 torture or mistreatment case allegations, including those related to Abu Dheeb and Jalila al-Salman which were filed in March and April 2012. According to the Government, the judicial police investigators are continuing to establish whether the necessary corroborating evidence and witnesses for a potential criminal referral exist.

182. The Government further provides the list of charges brought against Abu Dheeb and Jalila al-Salman, ranging from exploiting their offices in the BTA to commit criminal acts and incitement of illegal strikes intended to paralyze the educational system, to threats against the Minister of Education and promoting the overthrow of the State. Their appeals are pending with the Court of Cassation.

183. As regards the Committee's request for steps to be taken to amend the Trade Union Act, in full consultation with the social partners concerned, so as to clarify that general labour federations may be formed freely, the Government recognizes the concern raised by the amendment and has taken steps to modify it in consultation with the two federations in Bahrain. The Government expects the change to be implemented in law shortly. As regards the concerns raised about the provision enabling disqualification from trade union office of officials who had criminal convictions, the Government supports the Committee's view that this should not be subject to abuse with a view to restricting the exercise of legitimate trade union activity and remains in ongoing consultation with both federations to ensure the appropriate implementation. As regards the recommendations made by the Committee in previous cases (Cases Nos 2433 and 2522), the Government indicates that it remains in consultation with the social partners and will continue to take the recommendations of the Committee into account. As regards domestic workers, the Government indicates that their freedom of association is protected under article 19 of the Bahrain Constitution. The Government appreciates the invitation to consider ratification of the Domestic Workers Convention, 2011 (No. 189).

184. As regards the new allegations, the Government states that only general allegations have been made without any detail. Moreover, the Government categorically refutes the existence of any government policy against the GFBTU or the favouring of another union and in this regard recalls that it has been involved in dialogue and negotiations with the GFBTU over an extended period on the possibility of building upon the 11 March 2012 tripartite agreement.

185. In conclusion, the Government states that it is one of the leading countries in the Arab region regarding implementation of international labour standards. In this regard, the Government states that it is keen to take every necessary step towards ratifying ILO Conventions Nos 87 and 98 in cooperation with the concerned parties and as per the Constitution and national laws.

C. The Committee's conclusions

186. *The Committee recalls that this case concerns grave allegations of widespread arrest, torture, dismissals, intimidation and harassment of trade union members and leaders following a general strike action in March 2011 in defence of workers' socio-economic interests. The complainant further alleged acts of interference in the GFBTU's internal affairs through, inter alia, the amendment of the trade union legislation.*

187. *As regards recommendation (a), the Committee notes the Government's indication that the remaining unresolved cases are either pending in court and/or pending the decision of a worker to accept the re-employment or other resolution offered. The Committee, noting the signing in March 2014 of a Supplementary Tripartite Agreement, requests the Government to continue to keep it informed of the progress made to resolve the remaining cases in accordance with this agreement and the tripartite agreement of March 2012.*

188. *As regards recommendation (b), the Committee notes the copy of the Code of Conduct and Ethics of the Bahrain police, adopted by Ministerial Resolution No. 12 of 30 January 2012, provided by the Government, as well as the detailed information on human rights training of the police.*

189. *As regards recommendation (c) concerning allegations of a media campaign against the GFBTU, the Committee notes the Government's indication that it has seriously reviewed this allegation but finds no evidence indicative of such a campaign. The Government states that it permits freedom of the press, and news outlets routinely publish unflattering stories and offensive allegations against many Bahrainis. At the same time, there have also been media stories supportive of the GFBTU. The Government concludes that no further action can be taken on this matter absent some evidence provided to demonstrate such a targeted media campaign. As regards the 12 June 2011 communication by the Joint Committee of Major Companies, proposing possible legal action against the GFBTU, the Government reiterates that it did not support such action, which in the end was not taken. The Committee observes, nevertheless, that the GFBTU has referred to a defamation campaign which has accused them of treason, defaming Bahrain's image and abiding to a foreign agenda, including references to the ILO and the ITUC. The Committee once again requests the Government to review this matter with the GFBTU so as to enable it to conduct an independent inquiry to ensure that Government authorities are not linked to these statements and to issue a high-level public statement to clarify that trade union leaders and members should not be harassed or intimidated for carrying out legitimate trade union activity domestically or globally. It requests the Government to keep it informed of developments in this regard.*

190. *The Committee notes the Government's indication that the judicial police are still investigating the specific allegations of torture and ill-treatment of Jalila Al-Salman and Abu Dheeb while in detention. The Committee once again deeply regrets that there is still no detailed information on the results of these investigations and expects that the Government will expedite these investigations without delay. The Committee further notes the information provided by the Government on the charges brought against them, but would once again request copies of the court judgments in their cases. Observing that their appeals are still pending before the Court of Cassation, the Committee urges the Government also to provide copies of these judgments once they have been rendered and*

to ensure that Abu Dheeb is immediately released should it be found that he has been detained for the exercise of legitimate trade union activity.

191. *As regards the allegations concerning various amendments to the Trade Union Act and the Prime Minister's Decision No. 62 of 2006, the Committee notes the Government's statement that it is reviewing these provisions with the two federations in Bahrain and that it will take into account the conclusions and recommendations of the Committee in this regard. The Committee expects that the resulting amendments will bring Bahraini law and practice into conformity with Conventions Nos 87 and 98, thus facilitating the Government's ratification of these fundamental Conventions, and reminds it that ILO technical assistance is available in this regard. The Committee requests the Government to keep it informed of the progress made.*

192. *The Committee also notes the Government's indication that the freedom of association rights of domestic workers are ensured through the Constitution and expects that the Government will take steps without delay for specific legislative provisions to ensure effective implementation of these rights.*

193. *Finally, the Committee notes the series of allegations of anti-union discrimination and interference by the employer in trade union affairs in the following companies: ALBA, BAS, ASRY, Aluminium Rolling Mill, BATELCO, BAPCO, BAFCO, Gulf Air, Yokogawa Middle East, KANOO cars and Sphynx cleaning. The Committee regrets that the Government has not provided any detailed information in reply to the specific allegations raised by the GFBTU in its communication dated 14 February 2012 and requests it to conduct inquiries in this regard without delay and provide information on their outcome. The Committee further invites the Government to solicit information from the employers' organization concerned on these allegations so that its views, as well as those of the enterprises concerned, may be made available to the Committee.*

The Committee's recommendations

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

(a) The Committee requests the Government to continue to keep it informed of the progress made to resolve the remaining cases of dismissal following the 2011 demonstrations, in accordance with the March 2012 Tripartite Agreement and March 2014 Supplementary Tripartite Agreement.

(b) The Committee requests the Government to review with the GFBTU its allegations relating to a defamation campaign against it, so as to enable the Government to conduct an independent inquiry to ensure that Government authorities are not linked to these statements, and to issue a high-level public statement to clarify that trade union leaders and members should not be harassed or intimidated for carrying out legitimate trade union activity domestically or globally. It requests the Government to keep it informed of developments in this regard.

(c) Deeply regretting, once again, that there is still no detailed information on the results of the investigations into the allegations of torture and mistreatment of Abu Dheeb and Jalila al-Salman while in detention, the Committee requests the Government to expedite these investigations without delay and to provide copies of the court judgments convicting them.

Observing that their appeals are still pending before the Court of Cassation, the Committee urges the Government also to provide copies of these judgments once they have been rendered, and to ensure that Abu Dheeb is immediately released should it be found that he has been detained for the exercise of legitimate trade union activity.

(d) The Committee expects that the amendments to the Trade Union Act and the Prime Minister's Decision No. 62 of 2006 will be made in the very near future and that they will bring Bahraini law and practice into conformity with Conventions Nos 87 and 98, thus facilitating the Government's ratification of these fundamental Conventions. The Committee reminds the Government that ILO technical assistance is available in this regard and requests the Government to keep it informed of the progress made. The Committee also expects that the Government will take steps without delay for specific legislative provisions to ensure effective implementation of the freedom of association rights of domestic workers.

(e) Finally, the Committee requests the Government to conduct inquiries without delay into the series of allegations raised by the GFBTU, in its communication dated 14 February 2012, of anti-union discrimination and interference by the employer in trade union affairs in the following companies: ALBA, BAS, ASRY, Aluminium Rolling Mill, BATELCO, BAPCO, BAFCO, Gulf Air, Yokogawa Middle East, KANOO cars and Sphynx cleaning. It further requests the Government to provide information on the outcome of these inquiries. The Committee invites the Government to solicit information from the employers' organization concerned on these allegations so that its views, as well as those of the enterprises concerned, may be made available to the Committee.

CASE NO. 3001

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

Complaint against the Government of the Plurinational State of Bolivia presented by the Trade Union Confederation of Construction Workers of Bolivia (CSTCB)

Allegations: The complainant organization alleges the failure to give effect to an arbitration award providing for the payment of certain benefits to the members of the Union of Municipal Public Works of the Municipality of Cercado Province in Cochabamba Department and objects to a decision by the Municipality to dock them a day's pay for staging a sit-down strike

195. The Trade Union Confederation of Construction Workers of Bolivia (CSTCB) presented its complaint in a communication of 22 November 2012.

196. The Government sent its observations in a communication of 14 June 2013.

197. The Plurinational State of Bolivia 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

198. In its communication of 22 November 2012, the CSTCB states that, on 11 January 2005, the Union of Municipal Public Works of the Municipality of Cercado Province in Cochabamba Department presented a list of demands containing 31 points, and on 6 October 2005 it presented a modified list containing three points on which it had not been possible to reach agreement. Against this background, a conciliation board was set up and, as agreement could not be reached, an arbitration tribunal was convened.

199. The complainant organization adds that the tribunal issued an award in 2007 ordering the provision of a meal allowance, seniority bonuses based on the institutional base salary and performance incentives. It also indicates that, as the Municipality had not demonstrated its willingness to give effect to the arbitration award, it had sought assistance in that regard from the judicial authority (the Third Labour and Social Welfare Court of Cochabamba), which repeatedly ordered the enforcement of the award. The complainant organization reports that, between July 2007 and October 2010, the Municipality lodged a series of appeals, which were rejected.

200. The complainant organization states that, on 7 October 2010, the Third Labour and Social Welfare Court of Cochabamba ultimately granted a reasonable period of time as requested by the Municipality for the purpose of making the individual payments, but that after the period of 40 days the payments in question had not been made. The complainant organization adds that the union nevertheless engaged in talks with the municipal authorities and a preliminary agreement on the enforcement of the arbitration award was drafted, but the municipal authorities did not sign it and they lodged further appeals between May and July 2011, which were also rejected. The complainant organization states that, on 25 July 2011, after lodging the aforementioned appeals, the Municipality filed an application for *amparo* (protection of constitutional rights), requesting that the decisions of the labour courts be overturned. On 16 November 2011, the application filed by the Municipality was accepted and the complainant organization brought the matter before the Plurinational Constitutional Court, calling for action in accordance with the law and for the protection of the consolidated rights of workers in accordance with the rights they have acquired under various awards and agreements.

201. The CSTCB indicates that, in the light of numerous delays caused by an abuse of the appeals process and the broken promise to sign the preliminary agreement on the enforcement of the arbitration award, on 14 July 2011 union members staged a sit-down strike under the provisions of article 53 of the Bolivian Constitution. The complainant organization alleges that the Municipality penalized those involved in this action by docking them a day's pay, but that the Departmental Labour Office ordered that the amount be reimbursed. The complainant organization adds that the Ministry of Labour, Employment and Social Welfare stated that it is not in a position to issue a ruling regarding the pay that was docked as a penalty for participation in the sit-down strike, and on the grounds that the right to strike is prohibited for the municipal sector under the provisions of section 118 of the General Labour Act, it issued Ministerial Resolution No. 218712 of 11 April 2012, cancelling the order to reimburse the docked pay. Lastly, the complainant

organization states that, at the time of presenting its complaint, there had been no specific outcome concerning the legal enforceability of the arbitration award in favour of the union and the workers who have suffered as a result of the Ministry of Labour's action undermining the right to strike (the complainant organization points out that, although the new Bolivian Constitution recognizes the right to strike in its article 53, this progressive notion of the right to strike is yet to be reflected in the General Labour Act – which dates back to 1939 and which contains anachronistic elements that run counter to the universally and constitutionally recognized right to strike – and in Supreme Decree No. 1958 of 6 March 1950, which restricts the right to strike in the public, fiscal and municipal administration, even though these are not specific and essential sectors).

B. The Government's reply

202. In its communication of 14 June 2013, the Government states that the political and institutional structure of the Bolivian State is based on full respect for the independence of the bodies and branches of government and their respective competences, as well as on institutional autonomy. In this regard, the Ministry of Labour, Employment and Social Welfare, with a view to carrying out the duties set out in section 86 of Supreme Decree No. 29894, received the list of demands in accordance with the procedure established by the General Labour Act, the Regulatory Decree and the Code of Labour Procedure at the time of convening the arbitration tribunal, which issued the arbitration award of 30 November 2005 and subsequently the award of 29 May 2007 and in which employers, workers and the Government were represented.

203. The Government adds that the Ministry of Labour, Employment and Social Welfare, in accordance with the labour regulations and administrative rules in force, determined in relation to the strike staged by the Union of Municipal Public Works of the Municipality of Cercado Province in Cochabamba Department, through Ministerial Resolution No. 218/12 of 11 April 2012, that: (1) the implementation of the arbitration award is not an administrative matter, which is why it cannot issue a ruling on the appropriateness of the decision by the Autonomous Municipal Government of Cochabamba to dock pay for strike action; (2) section 1 of Supreme Decree No. 1958 of 6 March 1950 prohibits the suspension of work in public services, in the form of a strike, lockout or other means; and (3) the order dated 1 November 2011 was notified after the deadline established in paragraph III of Act No. 2341, which is evidence to implicate, on grounds of responsibility for the public service, the former Chief of Cochabamba's Labour Department.

204. The Government states that the reasons outlined above supported the reversal of the administrative decisions providing for the reimbursement of wages for the day not worked, and the referral of the case to the investigating authority for the purposes of determining the existence or not of evidence of public service responsibility. In this regard, these actions were taken in compliance with the powers granted by the Constitution and other lower-ranking standards, as they were necessary to resolve the legal issue raised by the union. As to the alleged lack of timely and effective protection by the judicial system, the Government states that it is up to the judicial branch to decide on this issue, since it is responsible for exercising ordinary jurisdiction, as established by article 179(1) of the Constitution.

205. The Government indicates, with regard to the alleged incompatibility between the Constitution on the one hand and Supreme Decree No. 1958 of 6 March 1950 and the General Labour Act on the other, concerning the right to strike, that article 4 of the Code of Constitutional Procedure provides that any standard adopted by a State organ at any level is presumed to be constitutional, unless the Plurinational Constitutional Court deems otherwise. The Ministry of Labour, Employment and Social Welfare must comply with the rules in force under the principle of legality.

206. The Government concludes that: (1) the Ministry of Labour, Employment and Social Welfare followed the established procedures regarding the handling of the list of demands presented by the union and applied the principle of legality with regard to the work stoppage arising from the arbitration award of 29 May 2007; (2) the judicial branch, which is responsible for exercising ordinary jurisdiction, shall issue a ruling on the CSTCB's complaint regarding the lack of timely and effective protection by the judicial system; (3) as to the alleged incompatibility of the General Labour Act and Supreme Decree No. 1958 of 6 March 1950 with the Constitution, it is the responsibility of the Constitutional Court to issue a ruling in strict compliance with article 4 of the Code of Constitutional Procedure; and (4) the Government has not violated any international convention or national law concerning freedom of association.

C. The Committee's conclusions

207. *The Committee notes that, in the present case, the complainant organization alleges the failure to give effect to an award issued in 2007 by an arbitration tribunal concerning three points on a list of demands presented in January 2005 by the Union of Municipal Public Works of the Municipality of Cercado Province in Cochabamba Department and objects to a decision by the Municipality to dock a day's pay from the workers for staging a sit-down strike in response to an abuse of the appeals process and to a broken promise by the municipal authorities to sign a preliminary agreement on the enforcement of the arbitration award.*

208. *With regard to the alleged failure to give effect to an award issued in 2007 by an arbitration tribunal concerning three points on a list of demands presented in January 2005 by the Union of Municipal Public Works of the Municipality of Cercado Province in Cochabamba Department (the complainant organization indicates that, although the Third Labour and Social Welfare Court of Cochabamba repeatedly ordered the enforcement of the arbitration award, the municipal authorities refused to do this and between July 2007 and October 2010 lodged a series of appeals, which were rejected; and they participated in talks at which a preliminary agreement on the enforcement of the arbitration award was drafted, but ultimately they did not sign it), the Committee notes that, according to the Government: (1) the political and institutional structure of the Bolivian State is based on full respect for the independence of the bodies and branches of government and their respective competences, as well as on institutional autonomy; (2) in this regard, the Ministry of Labour, Employment and Social Welfare, with a view to carrying out the duties set out in section 86 of Supreme Decree No. 29894, received the list of demands in accordance with the procedure established by the General Labour Act, the Regulatory Decree and the Code of Labour Procedure at the time of convening the arbitration tribunal, which issued the arbitration award of 30 November 2005 and subsequently the award of 29 May 2007 and in which employers, workers and the Government were represented; and (3) the Ministry of Labour, Employment and Social Welfare followed the established procedures regarding the handling of the list of demands presented by the union.*

209. *In this respect, the Committee regrets that such a long time has elapsed (more than eight years since the start of the dispute relating to certain points on a list of demands) without a solution being found to some of the issues raised by the union on a list of demands (even when the judicial authority ordered the enforcement of an arbitration award on the matter) and observes that an application for amparo on the matter, filed by the Municipality, is still pending before the Constitutional Court. Under these circumstances, while recalling the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 934], the Committee expects that the Constitutional Court will hand down a ruling in*

the very near future regarding the arbitration tribunal's award concerning the list of demands by the Union of Municipal Public Works of the Municipality of Cercado Province in Cochabamba Department. The Committee requests the Government to keep it informed in this respect.

210. *With regard to the contested decision by the Municipality to dock a day's pay from workers for staging a sit-down strike in response to an abuse of the appeals process following an award by the arbitration tribunal concerning the list of demands presented by the union and in the light of the broken promise by the municipal authorities to sign a preliminary agreement on the enforcement of the arbitration award, the Committee takes note that, according to the Government: (1) the Ministry of Labour, Employment and Social Welfare, in accordance with the labour regulations and administrative rules in force, determined in relation to the strike staged by the Union of Municipal Public Works of the Municipality of Cercado Province in Cochabamba Department, through Ministerial Resolution No. 218/12 of 11 April 2012, that: (i) the implementation of the arbitration award is not an administrative matter, which is why it cannot issue a ruling on the appropriateness of the decision by the Autonomous Municipal Government of Cochabamba to dock pay for strike action; (ii) section 1 of Supreme Decree No. 1958 of 6 March 1950 prohibits the suspension of work in public services, in the form of a strike, lockout or other means; and (iii) the order dated 1 November 2011 was notified after the deadline established in paragraph III of Act No. 2341, which is evidence to implicate, on grounds of responsibility for the public service, the former Chief of Cochabamba's Labour Department; (2) the reasons outlined above supported the reversal of the administrative decisions providing for the reimbursement of wages for the day not worked, and the referral of the case to the investigating authority for the purposes of determining the existence or not of evidence of public service responsibility; and (3) in this regard, these actions were taken in compliance with the powers granted by the Constitution and other lower-ranking standards, as they were necessary to resolve the legal issue raised by the union. In this regard, the Committee recalls that it has emphasized on several occasions 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]. Under these circumstances and taking into account the information that has been communicated, the Committee will not proceed with the examination of these allegations.*

211. *With regard to the allegations that, although the new Constitution of the Plurinational State of Bolivia recognizes the right to strike in its article 53, the General Labour Act, which dates back to 1939, contains anachronistic elements that run counter to the universally and constitutionally recognized right to strike, and Supreme Decree No. 1958 of 6 March 1950 restricts the right to strike in the public, fiscal and municipal administration, even though these are not specific and essential sectors, the Committee notes that, according to the Government: (1) with regard to the alleged incompatibility between the Constitution on the one hand and Supreme Decree No. 1958 of 6 March 1950 and the General Labour Act on the other, concerning the right to strike, article 4 of the Code of Constitutional Procedure provides that any standard adopted by a State organ at any level is presumed to be constitutional, unless the Plurinational Constitutional Court deems otherwise; and (2) the Ministry of Labour, Employment and Social Welfare must comply with the rules in force under the principle of legality. In this regard, the Committee observes that section 1(a) of Supreme Decree No. 1958 of 1950, which is contested by the complainant organization, provides that public, fiscal and municipal administration services are among those considered to be public services, where the suspension of work is prohibited. In this respect, the Committee recalls that, on numerous occasions, it has indicated 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; (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); and*

*(3) in the event of an acute national emergency [see **Digest**, op. cit., paras 570 and 576]. Under these circumstances, the Committee considers that municipal workers, other than those who provide essential services in the strict sense of the term, are not included in the abovementioned categories and therefore should be able to exercise the right to strike. While observing that the Government has informed the Committee of Experts on the Application of Conventions and Recommendations (CEACR) that in follow-up to the adoption of the new Constitution it has initiated a legislative reform [see 2013 Report of the CEACR, observations on the application of Conventions Nos 87 and 98], the Committee expects that all the necessary measures will be taken to modify or amend Supreme Decree No. 1958 of 1950 in order to bring it into full conformity with the principles of freedom of association.*

The Committee's recommendations

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

(a) Recalling the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations, the Committee expects that the Constitutional Court will hand down a ruling in the very near future regarding the arbitration tribunal's award concerning the list of demands by the Union of Municipal Public Works of the Municipality of Cercado Province in Cochabamba Department. The Committee requests the Government to keep it informed in this respect.

(b) The Committee expects that all the necessary measures will be taken to modify or amend Supreme Decree No. 1958 of 1950 in order to bring it into full conformity with the principles of freedom of association enunciated in its conclusions.

CASE NO. 2655

INTERIM REPORT

Complaint against the Government of Cambodia presented by Building and Wood Workers' International (BWI)

Allegations: Unfair dismissals, acts of anti-union discrimination and the refusal to negotiate with the trade union concerned by restoration authorities: the Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA), the Japan–APSARA Safeguarding Angkor Authority (JASA), and the Angkor Golf Resort

213. The Committee has already examined the substance of this case on four occasions, most recently at its March 2013 meeting where it issued an interim report, approved by the Governing Body at its 317th Session [see 367th Report, paras 261–269].

214. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of this case. At its October 2013 meeting [see 370th Report, para. 6], the Committee launched an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case even if the observations or information from the Government have not been received in due time.

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

A. Previous examination of the case

216. In its previous examination of the case, the Committee made the following recommendations [see 367th Report, para. 269]:

(a) The Committee deeply regrets that the Government has not provided the information requested or adopted the measures requested, and urges the Government to be more cooperative in the future and to provide information without delay on the measures taken to implement the Committee's recommendations.

(b) The Committee urges the Government and the complainant to provide information on the implementation of the Arbitration Council's award (No. 175/09-APSARA) issued on 5 February 2010, in relation to the dispute involving the APSARA authority, as well as on any appeal that may have been made to the courts by the workers in relation to the JASA arbitration decision (No. 177/09-JASA) of 22 January 2010. With regard to the case concerning the Angkor Golf Resort, the Committee urges the Government to keep it informed of any development regarding the examination by the Arbitration Council of the dispute, and to supply a copy of the decision of the Arbitration Council once adopted. The Committee expects that a decision will be taken without further delay, through an impartial and independent procedure, and that, if the proceeding demonstrates the anti-union character of the dismissals, the dismissed union leaders and activists will be immediately reinstated without loss of pay or benefits. If, while noting the anti-union nature of the dismissals, the Arbitration Council considers that the reinstatement of the dismissed trade union leaders and activists is not possible for objective and compelling reasons, the Committee strongly urges the Government to take the necessary measures to ensure that the workers concerned are paid adequate compensation which would constitute a sufficiently dissuasive sanction against anti-union dismissals.

(c) The Committee once again recalls that acts calculated to make the employment of a worker subject to the condition that he or she not join a union or shall relinquish their trade union membership constitutes a violation of Article 1 of Convention No. 98, and strongly urges the Government to ensure that any infringement found in this respect will be sufficiently and appropriately sanctioned.

(d) As to the elections in the JASA union, the Committee once again urges the Government to take the necessary measures, including the issuance of appropriate on-site instructions, to ensure that the union may elect its representatives in full freedom, and that the workers may participate in these elections free from fear of dismissal or reprisal of any kind, and to indicate the steps taken in this regard and to inform it as to when the elections of the union officers were held.

(e) Furthermore, the Committee strongly urges the Government to take the necessary measures to ensure that both the APSARA and the Angkor Golf Resort engage in good faith negotiations with their respective unions, and to keep it informed in this regard.

(f) Finally, the Committee strongly urges the Government to take steps without delay to adopt an appropriate legislative framework to ensure that workers enjoy effective protection against acts of anti-union discrimination, including through the provision of sufficiently dissuasive sanctions and rapid, final and binding determinations. The Committee once again invites the Government to further avail itself of the technical assistance of the Office in this respect.

B. The Committee's conclusions

217. *The Committee deeply regrets that, despite the time that has elapsed since the last examination of the case, and given the seriousness of the alleged acts (acts of anti-union discrimination at three workplaces, including dismissals of trade union leaders and activists), the Government has not provided the information requested, despite being invited to do so, including by means of an urgent appeal. The Committee urges the Government to be more cooperative in the future.*

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

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

220. *The Committee deeply regrets that this is the fourth time it has been obliged to consider this case in the absence of any response from the Government. In these circumstances, the Committee is once again obliged to reiterate the recommendations it made when it examined this case at its meeting in March 2013 [see 367th Report, para. 269]. The Committee has, however, understood from the Arbitration Council that the parties reached an agreement with respect to the Angkor Golf Resort. The Committee firmly urges the Government to provide information without delay on the measures taken to implement these recommendations and, given that the allegations refer to enterprises, to solicit information from the employers' organization concerned with a view to having at its disposal, its views, as well as those of the enterprise concerned on the questions at issue. The Committee further invites the Government to accept an ILO technical assistance mission to facilitate the resolution of the pending matters in this case.*

The Committee's recommendations

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

(a) The Committee deeply regrets that the Government has not provided the information requested, or adopted the measures requested, and urges the Government to be more cooperative in the future and to provide information without delay on the measures taken to implement the Committee's recommendations.

(b) The Committee urges the Government and the complainant to provide information on the implementation of the Arbitration Council's award (No. 175/09-APSARA), issued on 5 February 2010, in relation to the dispute involving the APSARA authority, as well as on any appeal that may have been made to the courts by the workers in relation to the JASA arbitration decision (No. 177/09-JASA) of 22 January 2010.

(c) The Committee once again recalls that acts calculated to make the employment of a worker subject to the condition that he or she not join a union, or shall relinquish their trade union membership, constitutes a violation of Article 1 of Convention No. 98, and strongly urges the Government to ensure that any infringement found in this respect will be sufficiently and appropriately sanctioned.

(d) As to the elections in the JASA union, the Committee once again urges the Government to take the necessary measures, including the issuance of appropriate on-site instructions, to ensure that the union may elect its representatives in full freedom, and that the workers may participate in these elections free from fear of dismissal or reprisal of any kind, and to indicate the steps taken in this regard and to inform it as to when the elections of the union officers were held.

(e) Furthermore, the Committee strongly urges the Government to take the necessary measures to ensure that both the APSARA and the Angkor Golf Resort engage in good faith negotiations with their respective unions, and to keep it informed in this regard.

(f) Finally, the Committee strongly urges the Government to take steps without delay to adopt an appropriate legislative framework to ensure that workers enjoy effective protection against acts of anti-union discrimination, including through the provision of sufficiently dissuasive sanctions and rapid, final and binding determinations. The Committee once again invites the Government to further avail itself of the technical assistance of the Office in this respect.

(g) The Committee firmly urges the Government to provide information without delay on the measures taken to implement these recommendations and, given that the allegations refer to enterprises, to solicit information from the employers' organization concerned with a view to having at its disposal the organization's views, as well as those of the enterprise concerned on the questions at issue. The Committee further invites the Government to accept an ILO technical assistance mission to facilitate the resolution of the pending matters in this case.

CASE NO. 2963

DEFINITIVE REPORT

Complaint against the Government of Chile presented by the National Federation of the Unions of Supervisors, List A, and the Professionals of the Enterprise CODELCO (FESUC)

Allegations: The complainant alleges that the enterprise CODELCO, pursuant to provisions of the Labour Code which are not in conformity with Conventions Nos 87 and 98, has excluded workers with temporary contracts for work or for services, and also those serving as superintendents or directors, from collective bargaining; discourages exercise of the right to organize, in that non-union workers, who enjoy the benefits stipulated in a collective instrument, are obliged to pay 75 per cent of the ordinary monthly union dues; and outlawed a work stoppage called in response to the policy implemented by the state enterprise to impose its transformation plans, because they are outside the collective bargaining process

222. The complaint is set out in a communication from the National Federation of the Unions of Supervisors, List A, and Professionals of the Enterprise CODELCO (FESUC), dated 14 June 2012.

223. The Government sent its observations in a communication of August 2013.

224. Chile 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

225. In its communication dated 14 June 2012, FESUC reports that it has affiliated six unions and some 1,800 professionals working for the Enterprise CODELCO (hereinafter referred to as "the enterprise"). The union was established on 28 October 1993 in the city of Chuquicamata by the supervisors' unions of the El Teniente, Andina, Salvador, Tocopilla and Chuquicamata divisions and by the central office. In its by-laws, FESUC states that its founding mission is to "uphold and develop the fundamental rights of workers, especially the freedom of association and collective bargaining enshrined in Conventions Nos 87 and 98 of the International Labour Organization".

226. FESUC notes that the approach to law in Chile is extremely legalistic and positivist, to the extent that what is not expressly regulated by ordinary law is considered to have no existence as a right, and, to the extent that it is not expressly authorized by law, it cannot be exercised. In its view this implies that the theory which suggests that ILO Conventions

are only applicable in Chile to the extent that they are explicitly recognized by domestic law, rather than by being ratified and in force in this country, is often used to render null and void the content of such agreements. This means that, in practice, increasing currency is being given to a particular type of misunderstanding and a systematic violation of the ILO Conventions in force in Chile. Since the ratification by the Chilean Parliament in 1999 and the adoption and entry into force in Chile of ILO Conventions Nos 87 and 98, together with the other ILO Conventions already ratified by Chile, the state authorities have not carried out the constitutional and legal reforms necessary to ensure and give effect to the principle of freedom of association and to the other principles enshrined in these Conventions. The National Congress has only revised certain regulations (by Law No. 19759), but has maintained others that run counter to international standards on freedom of association, rendering it impossible to implement the reforms in practice.

227. FESUC claims that figures provided by the Department of Labour show that the historically low rate of unionization since 1973 has not improved, and has even decreased. Currently there are unions at only 5.5 per cent of firms in Chile, with a membership rate of 13.6 per cent, and collective bargaining is marginal, covering a mere 4 per cent of male and female workers.

228. FESUC alleges that the enterprise has violated and continues to violate the Conventions on freedom of association and collective bargaining. It specifically cites the following violations:

- Limitation of the right to collective bargaining, employing the arguments of article 305 of the Labour Code. FESUC alleges that, during the collective bargaining process undertaken by one of the unions affiliated to the Federation in 2011, the enterprise invoked article 305 of the Labour Code to exclude from that collective bargaining all workers who had temporary contracts for work or services in the "Radomiro Tomic" organization and those serving as directors or superintendents in the "Ministro Hales" establishment. FESUC claims that the exclusion of CODELCO supervisors from collective bargaining constitutes an encroachment on the freedom of association of these workers; not only are they deprived of their fundamental right to collective bargaining, but the bargaining position of the supervisors' union is itself also weakened by the drop in numbers of members and the lack of potential growth in the section composed of senior professionals, as they are deprived of their legitimate right to collective representation.

- Limitation of the right to organize and collective bargaining, citing the provisions of article 346 of the Labour Code which requires that non-union workers who enjoy the benefits stipulated in a collective instrument should pay 75 per cent of the ordinary monthly union dues. FESUC points out that, whenever a supervisors' union negotiates collectively, the enterprise extends to non-union workers all the benefits secured by the union. FESUC notes that the collective bargaining process and most of the activities involving worker representation must be financed by union dues (ordinary and extraordinary), which are also used for the commissioning of studies, consultancies and other activities that are part of that process, such as work meetings, assemblies and communications with its workers and affiliated workers. At the same time, union workers must use their own time and resources to attend meetings, study the proposals and counter-proposals and, if necessary, carry out the strike, during which the worker receives no remuneration. Non-union workers reap the benefits of the efforts, sacrifice, expenditure and investments made by both the union and the union workers, but without contributing any funding or investment of their own, or taking part in any strike action. Thanks, however, to the existence of article 346 of the Labour Code and its observation by the employer, they receive the full set of benefits

achieved by the union through collective bargaining, while only being required to pay 75 per cent of the ordinary union dues.

- In the enterprise there are about 3,500 supervisors, some 1,800 of whom are unionized. Thus, in practice, the 3,500 enterprise supervisors receive benefits equivalent to those gained by the unions affiliated to FESUC in each division, but the aforementioned costs and negotiation efforts fall exclusively on the shoulders of the 1,800 union workers represented in their trade union organizations. In consequence, the nearly 1,700 non-union supervisors, in keeping with the provisions of article 346 of the Labour Code, have no real incentive to join the union, because under this rule they enjoy the same benefits as union workers, but at a much lower cost than that borne by the union workers.

- Limitation of the right to strike, pursuant to article 369 and other provisions of the Labour Code. In 2011, the Federation of Copper Workers (FTC) called for a complete stoppage of all work in the enterprise, to take place on 11 July 2011. Accordingly, almost all the enterprise's unions, including those affiliated to FESUC, went on strike against the state enterprise's policy to impose its transformation plans, and the fact that many of the measures taken not only created precarious working conditions for staff but were designed to move the enterprise in the direction of privatization. This strike did not fall within the collective bargaining process described in Chilean law. The enterprise maintained and continues to maintain that the stoppage was illegal and threatened to fire workers who took part, calling into question the right of workers to carry out a legal strike outside the collective bargaining process.

B. The Government's reply

229. In its communication of August 2013, the Government states that the enterprise had highlighted the existence of the rule of law, a judiciary, and legal, political and administrative institutions which fully safeguarded the individual and collective rights of citizens. The enterprise adds that, before filing the present complaint, FESUC had taken no action through the appropriate bodies provided for by Chilean legislation. The enterprise reports that, in December 2012, it had a workforce of 19,019 of its own workers and 28,360 workers subcontracted from other firms, supporting its operations and services, in addition to 27,347 workers from contracting companies associated with the enterprise's construction or investment projects. The enterprise states that there are 20 unions with an overall membership of 13,866, a figure that represents 97.8 per cent of its total workforce. Where List A supervisors are concerned, the enterprise notes that there are seven unions, all affiliated to FESUC, with 1,758 members, equivalent to 52.1 per cent of the total number of List A supervisors. The enterprise adds that, owing to the depletion of its productive resources, it had come up with a new business strategy referred to as "structural projects". This strategy has led to the adoption of decisions that will create the appropriate organizational conditions to ensure the efficient implementation of these structural projects.

230. The enterprise maintains that all wages and working conditions set out in the contracts and collective agreements are the result of free and voluntary collective bargaining and that these contracts or collective agreements, in addition to having been freely agreed with the trade unions, contain no discriminatory clauses. In the collective bargaining process within the enterprise, trade unions exercise a constitutional right under which they agree on conditions of employment and collective instruments. These offer benefits far superior to those contained in other contracts or collective agreements concluded in Chile. It is recognized that workers have the right to take action, including strike action.

231. For its part the Government states that, in the case in question, FESUC had exercised its right of recourse to the ILO, but without having exhausted the remedies available at the national level. The Government believes that it would be difficult to bring a case at international level if there had not even been any opportunity for discussion at domestic level. In the Government's view, it should be stressed that certain provisions of the Political Constitution relating to the fundamental rights of individuals, the mechanisms for upholding those rights, the functions of the state authorities and agencies responsible for monitoring the legality of certain administrative acts and laws demonstrate that the country has a democratic system subject to effective checks and balances. This system enables, at different levels and using different legal and policy tools, the implementation of measures designed to improve the democratic system itself, through the principles, institutions and processes set out in the Constitution and the law. Lastly, the Government states that, on the basis of the information provided and the statements made by the enterprise, it dismisses the complaint and refutes as unfounded the complaint by FESUC alleging violations of Conventions Nos 87 and 98.

C. The Committee's conclusions

232. *The Committee observes that in the present case the complainant alleges that the enterprise CODELCO: (1) invoking the provisions of article 305 of the Labour Code, has excluded workers with temporary contracts for work or services in the organization "Radomiro Tomic" from the collective bargaining process, and also excludes those serving as directors or superintendents in the establishment "Ministro Hales"; (2) by applying article 346 of the Labour Code, which requires non-union workers who are the recipients of benefits under a collective instrument to pay 75 per cent of the regular monthly union dues, is discouraging individuals from exercising their right to organize; and (3) in accordance with articles 369 et seq. of the Labour Code outlawed a work stoppage against the policy that the state enterprise was applying, with a view to pushing through its transformation plans, because they were being developed outside the collective bargaining process.*

233. *With regard to the alleged exclusion from collective bargaining of workers with temporary contracts for work or services in the "Radomiro Tomic" establishment and of those serving as directors or superintendents in the "Ministro Hales" establishment, the Committee notes that the Government indicates that the enterprise has stated the following: (1) there are 20 unions with 13,866 members, representing 97.8 per cent of the total workforce; (2) where the List A supervisors are concerned, the enterprise has stated that there are seven unions, all affiliated to FESUC, comprising 1,758 members, equivalent to 52.1 per cent of the overall number of List A supervisors; (3) in the light of the depletion of productive resources, a new business strategy has been formed, known as "structural projects", and this strategy has resulted in decisions setting in place organizational conditions that will ensure the efficient implementation of these structural projects; (4) all wages and working conditions set out in the contracts and collective agreements are the result of free and voluntary collective bargaining and the contracts or collective agreements, as well as having been freely agreed on with the trade unions, contain no discriminatory provisions; (5) in the collective bargaining process within the enterprise the trade union organizations can exercise their constitutional right to agree on terms of employment, and the collective instruments provide for benefits far superior to those accorded in other contracts or collective agreements concluded in Chile. For its part, the Government states that: (1) FESUC has exercised its right to approach the ILO, but without having first exhausted the remedies available at the national level; and (2) it should be emphasized that certain provisions of the Constitution relating to the fundamental rights of individuals, the mechanisms for the protection of those rights, the functions of the state authorities and the agencies responsible for monitoring the legality of*

certain administrative acts and other laws all demonstrate that this country has a democratic system subject to effective checks and balances.

234. *In this regard, the Committee recalls that, with the exception of organizations representing categories of workers which may be excluded from the scope of Convention No. 98, such as the armed forces, the police and public servants engaged in the administration of the State, recognition of the right to collective bargaining is general in scope and all other organizations of workers in the public and private sectors must benefit from it. This being the case, recalling the principle according to which "temporary workers should be able to negotiate collectively" (see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 906), and while noting that neither the enterprise nor the Government referred to the specific allegations pertaining to this case, and restricting itself to observing that the right to collective bargaining is fully respected in the enterprise, the Committee requests the Government to take the appropriate measures, including legislative measures if necessary, to ensure that the respective workers' organizations will be able to bargain collectively on behalf of all workers, including those with temporary contracts for work or services, and also those serving as superintendents or directors.*

235. *Regarding the allegation that the application of article 346 of the Labour Code, which requires non-union workers who enjoy benefits provided under a collective instrument to pay 75 per cent of the ordinary monthly union dues, discourages exercise of the right to organize, the Committee points out that it has stated on numerous occasions that, when legislation admits trade union security clauses, such as the withholding of trade union dues from the wages of non-members benefiting from the conclusion of a collective agreement, those clauses should only take effect through collective agreements [see* ***Digest****, op. cit., para. 480]. The Committee requests the Government to take the appropriate measures, including legislative if necessary, to ensure respect for this principle.*

236. *Regarding the allegation that, under articles 369 et seq. of the Labour Code, the enterprise declared illegal a work stoppage called against the policy applied by the state enterprise with a view to pushing forward its transformation plans, because these were being developed outside the collective bargaining process, the Committee notes that the enterprise has stated that: (1) in the light of the depletion of productive resources a new business strategy has been formed, known as "structural projects", and this strategy has resulted in decisions setting in place organizational conditions that will ensure the efficient implementation of these structural projects; and (2) it recognizes the right of workers to take action, including strike action. In this regard, the Committee points out that "the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers" [see* ***Digest****, op. cit., para. 526]. In these circumstances, the Committee requests the Government to take all appropriate measures, including legislative if necessary, to uphold this principle.*

237. *Lastly, the Committee observes that, during its review of the application of Conventions Nos 87 and 98, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) examined several issues of law arising in this case and noted that the Government had reiterated its willingness to incorporate into the relevant national legislation all the necessary provisions to ensure prompt alignment with the Conventions in question. The Committee trusts that, as part of the legislative reforms referred to by the Government, the principles identified in this case will be fully taken into account, and draws the legislative aspects of this case to the attention of the CEACR.*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary measures, including legislative if necessary, to ensure that the respective workers' organizations will be able to bargain collectively on behalf of all workers, including those with temporary contracts for work or services, and also those serving as superintendents or directors.

(b) Recalling the principle that the occupational and economic interests which the workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers (see Digest, op. cit., para. 526), the Committee requests the Government to take all appropriate measures, including legislative if necessary, to uphold this principle.

(c) The Committee requests the Government to take the appropriate measures, including legislative if necessary, to guarantee the respect for the principles enunciated in its conclusions, and draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 2620

INTERIM REPORT

Complaints against the Government of the Republic of Korea presented by
– the Korean Confederation of Trade Unions (KCTU) and
– the International Trade Union Confederation (ITUC)

Allegations: The complainants allege that the Government refused to register the Migrants' Trade Union (MTU) and carried out a targeted crackdown on this union by successively arresting its Presidents Anwar Hossain, Kajiman Khapung and Toran Limbu, Vice-Presidents Raj Kumar Gurung (Raju) and Abdus Sabur, and General Secretary Abul Basher Moniruzzaman (Masum), and subsequently deporting many of them. The complainants allege that this has taken place against a background of generalized discrimination against migrant workers geared to create a low-wage labour force that is easy to exploit

239. The Committee last examined this case at its March 2013 meeting, when it presented an interim report to the Governing Body [see 367th Report, paras 532–559, approved by the Governing Body at its 317th Session (March 2013)].

240. The Government forwarded its response in a communication dated 20 February 2014.

241. The Republic of Korea has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

242. In its previous examination of the case in March 2013, the Committee made the following recommendations [see 367th Report, para. 559]:

(a) The Committee once again urges the Government to refrain from any measures which might involve a risk of serious interference with trade union activities and might lead to the arrest and deportation of trade union leaders for reasons related to their election to trade union office.

(b) The Committee expects that the relevant Supreme Court proceedings relating to Mr Catuira's case will be concluded in an expeditious manner and requests the Government to supply the ruling as soon as it is issued. In particular, the Committee considers it necessary that the Supreme Court specifically address the question as to whether the steps to deport Mr Catuira – both in February 2011 and in April 2012 – were taken on the grounds of his legitimate trade union activities and trade union functions. Further noting that a complaint on this matter was filed with the NHRC by migrants' rights activists on 1 May 2012, the Committee requests the Government and the

complainant to keep it informed of any developments in this regard, and to provide any other information related to this case.

(c) The Committee once again expresses its firm expectation that the Government will proceed with the registration of the MTU without further delay, and supply full particulars in relation to this matter.

(d) The Committee firmly expects that the judgment concerning the MTU's status will be rendered without further delay and once again requests the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Supreme Court's consideration and to provide a copy of the Supreme Court's decision once it is handed down.

(e) The Committee once again requests the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to find negotiated solutions to the issues faced by these workers. The Committee once again requests to be kept informed of the progress made in this regard.

B. The Government's reply

243. In regard to Mr. Catuira's case, the Government indicates that, on 27 September 2012, the Supreme Court turned down Mr Michel Catuira's appeal against the decision of the Seoul High Court. According to the Government, the Supreme Court stipulated in its ruling that the decision of the Seoul High Court had not been affected by any fault of going beyond the limits of the principle of free evaluation of evidence to recognize facts in violation of the principles of logic and experience or misunderstanding, or failing to consider, the legal principles of section 89(1) No. 2 of the Immigration Control Law ("Where it is found that permission, etc. had been obtained by false or other unlawful means"), the principles of trust protection in the cancellation of profitable administrative action, the legal principles related to limits to discretionary authority, workers' right to organize and their right to collective action. The Government therefore considers that the denial of entry of Mr Catuira is legitimate based on related laws and has nothing to do with his union activities.

244. Furthermore, concerning the complaint filed by Mr Catuira to the National Human Rights Commission of Korea (NHRCK) on 1 May 2012, arguing that the Immigration Office's denial of entry constitutes a human rights violation, the Government reports that the NHRCK decided on 24 July 2012 that the case was not a matter of human rights but immigration rules and, therefore, dismissed the complaint considering that the case was pending in court.

245. As to the status of the Migrants' Trade Union (MTU), the Government indicates that the Supreme Court has yet to hand down a ruling on the case concerning the establishment of the MTU, which has been pending before the court since 23 February 2007. It is expected that the Court decision will be rendered soon as not only the parties involved, such as the Government and the MTU, but also the Committee on Freedom of Association, civic groups as well as workers' and employers' organizations at home and abroad are awaiting it. The Government adds that this case is related to the establishment of a trade union by foreign workers without valid working visa. The Government wishes to reiterate that foreign workers who are staying in the Republic of Korea with legitimate status are granted the same labour rights as Korean workers including the right to establish a trade union and the right to collective bargaining. For instance, in February 2011, a group of foreign English instructors in Gwangju formed a trade union, submitted a report in this regard and received a union establishment certificate.

C. The Committee's conclusions

246. *The Committee recalls that this case concerns allegations that, against a background of an allegedly generalized discrimination against migrant workers intended to create a low wage and easily exploitable labour force, the Government refused to register the MTU and carried out a targeted crackdown on the MTU by successively arresting its officers and subsequently deporting many of them.*

247. *The Committee notes that the Government indicates that: (i) on 27 September 2012, the Supreme Court turned down Mr Catuira's appeal stipulating that the decision of the Seoul High Court had not been affected by any fault of going beyond the limits of, or failing to consider, certain principles, including the legal principles of section 89(1) No. 2 of the Immigration Control Act (permission obtained by false or other unlawful means), the legal principles related to limits to discretionary authority, the workers' right to organize and their right to collective action; and that the denial of entry of Mr Catuira is thus legitimate and not related to his union activities; (ii) on 24 July 2012, the NHRCK also dismissed Mr Catuira's complaint in this regard stating that the case was not a matter of human rights but immigration rules; (iii) the Supreme Court is expected to soon render a ruling on the case concerning the status of the MTU, which is related to the establishment of a union by foreign workers without valid working visa; and (iv) foreign workers with legitimate status are granted the same labour rights as Korean workers including the right to establish a trade union.*

248. *While taking due note of the judicial developments relating to Mr Michel Catuira, former President of the MTU, the Committee recalls the overall framework of this long-standing case in which, against a background of allegedly generalized discrimination against migrant workers, the Government's refusal to register the MTU went hand in hand with successively arresting the previous MTU Presidents and other trade union officials, and subsequently deporting many of them [see 358th Report, para. 455], including, most recently, Mr Catuira.*

249. *With respect to the Government's statement that the MTU case is related to the establishment of a union by foreign workers without a valid working visa, the Committee wishes to recall the complainants' earlier allegations that the MTU is cultivating new leadership and documented migrant workers are serving as union officers, and that the antagonistic position of the Government continues to impede the union's daily activities due to widespread fear among the membership and potential membership that active participation in the union would lead to arrest and deportation. According to the allegations, this sense of intimidation is true not only among undocumented migrant workers, but also among documented migrant workers who recognize that their legal status does not render them immune to government targeting and harassment (see 355th Report, paras. 685 and 704).*

250. *In particular, the Committee observes, as it is already done in a previous examination of the case (see 353rd Report, para. 792), that: (i) the MTU's first President, Mr Anwar Hossain, was arrested on 14 May 2005, eleven days after notifying the creation of the MTU with him as President to the Seoul Regional Labour Office, and after having been working in the country for almost ten years without any apparent incident; (ii) the MTU's second President Kajiman Khapung was arrested four months after the departure of Anwar Hossain, on 27 November 2007, along with Vice President Raju Kumar Gurung and General Secretary Abul Basher Maniruzzaman (Masum), after having spent 15 years and nine months, seven years and seven months and 11 years and three months, respectively, in the Republic of Korea; they were subsequently deported to their home countries; (iii) the MTU's third President, Torna Limbu, was arrested on 2 May 2008, along with Vice President Abdus Sabur, less than a month after their election to the*

leadership of the MTU and after having spent 16 years and four months and nine years and two months, respectively, in the Republic of Korea; they were subsequently deported.

251. *Observing that the Presidents of the MTU, along with other MTU officials, have been systematically arrested shortly after their election to trade union office and despite the fact that they had been in the country for many years, the Committee regrets that no detailed information was provided, clearly demonstrating that Mr Catuira's deportation was unrelated to his trade union function and activities. Recalling its previous recommendation concerning Mr Catuira's case where the Committee considered it necessary that the Supreme Court specifically address the question as to whether the steps to deport Mr Catuira were taken on the grounds of his legitimate trade union activities and trade union functions, the Committee remains concerned at what appears to have been a summary dismissal of Mr Catuira's case by the Supreme Court without any detailed information being provided on the review and consideration of this issue. The Committee requests the Government to provide the decisions of the Supreme Court and of the National Human Rights Commission of Korea concerning the complaint filed by Mr Catuira. It also invites the complainants to provide any additional information they consider may assist the Committee's understanding in this regard. The Committee generally once again urges the Government to refrain from any measures which might involve a risk of serious interference with trade union activities and might lead to the arrest and deportation of trade union leaders for reasons related to their election to trade union office. Moreover, the Committee considers that the general context recalled above highlights all the more the utmost importance of the determination by the Supreme Court of the status of the MTU, so as to ensure that its future trade union leaders will be adequately protected.*

252. *In this regard, the Committee deeply regrets that the appeal filed by the Government against the Seoul High Court's decision in favour of the MTU, is still pending before the Supreme Court, more than seven years after the appeal. The Committee once again recalls, as it had in its previous examinations of this case, the general principle according to which all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 216]. The Committee further recalls that when examining legislation that denied the right to organize to migrant workers in an irregular situation – a situation maintained de facto in this case – it has emphasized that all workers, with the sole exception of the armed forces and the police, are covered by Convention No. 87, and it therefore requested the Government to take the terms of Article 2 of Convention No. 87 into account in the legislation in question [see* ***Digest****, op. cit., para. 214]. The Committee also recalls the resolution concerning a fair deal for migrant workers in a global economy adopted by the ILO Conference at its 92nd Session (2004) according to which "[a]ll migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998. In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour, cover all migrant workers, regardless of status" (paragraph 12).*

253. *In the light of the principles enunciated above, the Committee once again firmly expects that the Government will proceed with the MTU's registration without any further delay and supply full particulars in relation to this matter. It once again firmly expects that the judgment concerning the MTU's status will be rendered without further delay and urges the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Supreme Court's consideration, and to provide a copy of the Supreme Court's decision once it is handed down.*

254. *The Committee also urges the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to find negotiated solutions to the issues faced by these workers. The Committee once again requests to be kept informed of the progress made in this regard.*

The Committee's recommendations

255. ***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 the decisions of the Supreme Court and of the National Human Rights Commission of Korea concerning the complaint filed by Mr Catuira. It also invites the complainants to provide any additional information they consider may assist the Committee's understanding in this regard. The Committee generally once again urges the Government to refrain from any measures which might involve a risk of serious interference with trade union activities and might lead to the arrest and deportation of trade union leaders for reasons related to their election to trade union office.

(b) The Committee once again firmly expects that the Government will proceed with the registration of the MTU without further delay, and supply full particulars in relation to this matter.

(c) Deploring that the appeal filed by the Government against the Seoul High Court's decision in favour of the MTU, is still pending before the Supreme Court, more than seven years after the appeal, the Committee once again firmly expects that the judgment concerning the MTU's status will be rendered without further delay and urges the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Supreme Court's consideration and to provide a copy of the Supreme Court's decision once it is handed down.

(d) The Committee also urges the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to find negotiated solutions to the issues faced by these workers. The Committee once again requests to be kept informed of the progress made in this regard.

CASE NO. 2992

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

Complaint against the Government of Costa Rica presented by the Asociación de Profesores de Segunda Enseñanza (APSE)

Allegations: The complainant alleges the refusal of dialogue by the public education authorities and the initiation of proceedings against members of the complainant organization for trade union activities

256. The complaint is contained in a communication of the Asociación de Profesores de Segunda Enseñanza (APSE), dated 23 October 2012.

257. The Government sent its observations in a communication dated 19 August 2013.

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

A. The complainant's allegations

259. In a communication dated 23 October 2012, the APSE alleges that the Government, in particular the Ministry of Public Education, has refused to undertake dialogue and regular consultations with teachers' trade union organizations, grouped together in "Teachers in Action", especially the APSE, and has refused to meet these organizations. The complainant attributes this attitude to its denunciation of assumed irregularities committed by the public education authorities and the call for the Minister's resignation.

260. Furthermore, the complainant points out that, in accordance with the Act on Associations and its own statutes, the APSE issued invitations to an annual national congress on 8, 9 and 10 August 2012. In this regard, it states that, on 25 June 2012, the public education authorities authorized the participation of the complainant's members in the 57th National Congress. The members provided proof of their attendance at the event in question to their immediate supervisors, and within the prescribed timeframe, by means of a supporting document issued by the complainant; the APSE states that, for practical purposes, in view of the very large number of participants, it provided proof with the scanned signature of the Secretary-General and the organization's official seal. As of 1 October 2012, the Department of Human Resources of the Ministry of Public Education objected to the presentation of scanned signatures and began to notify a large number of members who had attended the Congress that disciplinary proceedings had been initiated against them, as they had not provided proof of their attendance at the 57th Congress in the form of an original participation certificate.

B. The Government's reply

261. In its communication of 19 August 2013, the Government rejects the claim that anti-union acts have been committed and states that the APSE is not a trade union, nor is it registered as such or have the functions of a union, but it is rather an association of persons entered in

the Register of Associations; the Government therefore requests the Committee to assess whether, within the framework of the proceedings, this association is actually legitimate and has the capacity to present complaints to the Committee.

262. The Government states that at no time has the Ministry of Public Education restricted or limited union rights and also that it has even signed the first collective agreement with the two main trade unions in the education sector, which will benefit more than 70,000 employees.

263. The Government adds that the APSE is part, although not as a trade union, of the analysis and discussion forum known as "Teachers in Action" and it is not certain either that the Ministry in question has an obstructive attitude towards "Teachers in Action" or against the APSE, or that it refused meetings or appointments requested by the APSE; by contrast, it responded to all the communications from this association, in particular to those where "paid leave" is requested so that its members may participate in ordinary general assemblies (the Government attaches the corresponding documents). The Government specifies, however, that officials who attend the assemblies must submit to their supervisors the *original* proof of attendance provided by the APSE, for which reason a document submitted with the scanned signature does not meet this requirement, the aim of this requirement being to avoid abuses.

C. The Committee's conclusions

264. *The Committee notes that the Government states that the complainant association is not a trade union organization and requests the Committee to examine whether it has the capacity to present complaints.*

265. *The Committee observes that, although the APSE is not included in the Register of Associations, it does participate in social dialogue forums in the education sector and obtains permission from the authorities for its members to participate in general assemblies.*

266. *The Committee notes that this case refers to allegations of: (1) the refusal to meet the APSE representatives and to launch a social dialogue, owing to public denunciations by the trade union of significant irregularities on the part of the public education authorities; and (2) the institution of disciplinary proceedings against thousands of members who participated in the trade union congress and who provided proof of their attendance only in the form of a record on which the signature was scanned.*

267. *The Committee takes note of the Government's observations denying the refusal to meet or to conduct a dialogue with representatives of the APSE and that it submits proof in this regard. The Committee notes that the requirement of proof of participation of members in the APSE congress in the form of original proof of attendance provided by the APSE (whereby a scanned signature is not sufficient) is justified by the Government on the basis that paid leave is granted to such employees and for the purpose of avoiding abuses.*

268. *As regards the alleged institution of disciplinary proceedings against the APSE members, whose attendance at the annual trade union congress was authorized by the authorities and proven by the complainant with scanned signatures, but not with handwritten signatures (as asserted by the Government), the Committee notes that the Government has not responded to this allegation and that, by contrast, the complainant has enclosed a request by the Administrative Vice-Minister of the Ministry of Education of 24 September 2012, for the institution of disciplinary proceedings against numerous officials identified by name. The Committee requests the Government to respond to these allegations and to keep it informed of any decision taken.*

The Committee's recommendation

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

> ***The Committee requests the Government to submit its observations on the allegations referring to the institution of disciplinary proceedings against numerous officials relating to the proof of their attendance at the 57th APSE National Congress and to keep it informed of any decision taken in that regard.***

CASE NO. 2908

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

Complaint against the Government of El Salvador presented by the Union of Workers of the Garments Company Gama (STECG) and supported by the Federation of Unions of Workers in El Salvador (FESTES)

Allegations: The complainant organizations allege the sudden closure of a company in the maquila sector to prevent a collective agreement from being signed and the circulation of a "black list" making it impossible for other enterprises in the maquila sector to hire the workers

270. The complaint is contained in a communication dated 15 August 2011 from the Union of Workers of the Garments Company Gama (STECG) and supported by the Federation of Unions of Workers in El Salvador (FESTES) in a communication of 30 September 2011.

271. The Government sent its observations in communications dated 21 August 2012 and 20 September 2013.

272. 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. The complainants' allegations

273. The complainants allege that the attempt by STECG to negotiate an initial collective agreement with the Garments Company Gama, SA of CV (hereinafter Gama) gave rise to the sudden closure of the textile company and the subsequent dismissal of its 270 workers.

274. Established on 31 October 2009, STECG presented a list of demands on 5 April 2011 to the Director-General of Labour of the Ministry of Labour and Social Welfare to begin negotiating an initial collective company agreement governing employer–employee labour relations. On 26 April, Gama made clear to the Ministry of Labour its refusal to enter into negotiations with STECG, claiming that the trade union did not have the number of members required by the Labour Code for collective bargaining. The Ministry of Labour then requested STECG to submit its list of members' names, which was submitted to the company by the Ministry without consultation.

275. Once STECG's overall responsibility for negotiating a collective agreement was confirmed, the Ministry, setting aside the direct treatment phase which, according to national legislation, should constitute the first phase of collective bargaining, and summoned the parties directly for the following stage of conciliation of the collective dispute. From 6 to 17 June 2011, four conciliation meetings were held in which STECG and the enterprise managed to approve 17 clauses of the collective agreement being prepared.

276. On 18 June 2011, the company's workers noted that the company was beginning to withdraw from the factory part of the machinery and also raw materials. On 20 June, the company informed the Ministry of Labour that it had taken the decision to close its operations owing to lack of profitability and that it had available funds to pay only 70 per cent of what the workers were owed. The organizations state that these declarations contrast with the information available in the Commercial Register of El Salvador, where on 23 February 2010 the company's accountant had presented documents providing evidence of significant growth in the company's profits for 2008. That same day, while the representatives of STECG and the company continued negotiating the draft collective agreement, the Director-General of Labour and the Director-General of Inspection of the Ministry of Labour appeared in order to state that there was no longer any point in negotiating that agreement in view of the company's closure.

277. On 18 July 2011, faced with the company's threats not to pay what all the workers were owed, STECG necessarily made a submission in which it renounced the process of negotiating the collective agreement if said payments were made.

278. The complainant organizations allege that since that time Gama employees continue to be unable to find new jobs, since the other companies in the sector are making it perfectly clear to them that their previous employment makes it impossible to hire them. They consider that the handing over of the list of STECG members' names to the enterprise is related to this situation.

279. The complainant organizations consider that the sudden and unjustified closure of the company in the midst of the negotiation of what would have been the first collective agreement in the *maquila* sector in El Salvador is a direct violation of Articles 1 and 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), since the company's 270 workers were dismissed for having exercised their right to collective bargaining, which they are still denied.

280. They also claim that the practice of the Ministry of Labour, based on Salvadorian legislation, of requesting the personal information of each of the company's union members and providing said information to the company to endeavour to meet the legal requirements as regards overall responsibility for collective bargaining constitutes interference by the public authorities, which contravenes Article 3(2) of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). That practice discourages the exercise of freedom of association and makes it possible for black

lists to be circulated, which would explain why it is impossible for Gama workers to be hired by other companies.

281. On the basis of the above allegations, the complainants request the reinstatement of all the workers from the company Gama, which would continue operating, compensation for the damage suffered and relaunching of the collective bargaining process.

B. The Government's reply

282. In its response of 21 August 2012, the Government of El Salvador indicates that the Ministry of Labour received a list of demands from STECG on 4 April 2011, which was forwarded to the company Gama. On 26 April, the company expressed in writing its refusal to undertake negotiations with STECG, since it considered that the majority of workers were not members of the union in question, one of the three present in the company, contrary to the requirements of article 271 of the Labour Code. The following day, the company made a new submission in writing in which it requested that the list of workers who were members of STECG be collated with the company's current name. Having noted that STECG actually satisfied the legal requirements for negotiation, the company showed complete willingness to undertake negotiations on a collective labour agreement.

283. As regards the interruption of the collective bargaining process, the Government states that the process was initially suspended owing to the fact that the employers had alleged that the company had been closed and that the process was finally shelved as a result of STECG's withdrawal, submitted in writing on 18 July 2011, as a result of the agreement reached with the company, through which the trade union agreed to give up the negotiating process under way, in exchange for the workers being paid everything they were owed. On 13 September 2011, STECG lodged an appeal for review of the decision to shelve the collective bargaining process. That appeal was declared non-receivable by the Ministry of Labour.

284. The Government states also that when the company closed down in the middle of the negotiations on the collective agreement, the Ministry of Labour informed the trade union of the possibility of requesting its participation as a conciliator or also bringing legal action, and that, at the negotiating table set up to try to achieve a solution to the conflict that had arisen as a result of the company's closure, the Ministry reminded the employers of their legal obligation to pay to all workers everything owed to them.

285. As regards the alleged anti-union practices and the reinstatement of the Gama workers, the Government states that STECG requested, in a submission of 13 February 2012, verification of the dismissal of the union officials. In a visit that took place on 14 February, the labour inspectorate noted that the company's textile *maquila* unit was not operating, while unbleached fabric manufacturing activity was ongoing, employing 22 people. The inspectors also noted that the STECG union officials had signed their contract termination form and received payment of what was owed to them, for which reason they concluded that no infringement had taken place.

286. In its communication of 20 September 2013, the Government confirms that the visit by the labour inspectorate which took place on 14 February 2012 consisted in noting the cessation of the textile *maquila* activity and the maintenance of reduced unbleached fabric activity with different machinery. The Government indicates that the dismissal of all the workers following the closure, irrespective of whether they were members of a trade union, was something which made the inspector's work more difficult at the time of reporting as to whether anti-union discrimination had occurred.

C. The Committee's conclusions

287. *The Committee notes that this case refers on the one hand to allegations relating to the sudden closure of a company in the* maquila *sector in the midst of collective bargaining in order to prevent a collective Convention being signed, leading to the anti-union dismissal of 270 workers and, on the other hand, to allegations concerning the circulation of a black list that would make it impossible for other companies in the sector to hire workers from the company concerned.*

288. *The Committee notes the observations by the Government, in which it states that: in order to ensure that the STECG union had overall responsibility for collective bargaining, the Gama company requested that the list of STECG members be collated with the names of its active workers; the sudden closure of the company occurred in the middle of the collective agreement bargaining process and the trade union finally withdrew from the negotiating process, in exchange for the company paying everything owed to the workers; the labour inspectorate noted the maintenance of reduced activity in the workplace but did not note the anti-union dismissal of the union officials, since those officials had signed their contract termination forms and received payment of what was owed to them; the STECG lodged an appeal for review of the decision taken by the Directorate General of Labour to shelve the collective bargaining process, but the appeal was declared irreceivable by the Ministry of Labour.*

289. *As to the allegations that the list of STECG members' names was passed on to the company by the Ministry of Labour, the Committee notes that the Government states that the company requested the list of STECG members to be collated with the names of its active workers. In this regard, the Committee wishes to recall that the protection of data regarding union membership is a fundamental aspect of human rights and, in particular, the right to privacy [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, para. 350] and that the determination to ascertain or verify the representative character of trade unions can best be ensured when strong guarantees of secrecy and impartiality are offered [see* ***Digest****, op. cit., para. 351]. In this connection, with a view to avoiding possible acts of anti-union discrimination, the Committee requests the Government to take the necessary measures, including introducing legislation, to ensure that the lists of union members' names are not communicated to the employer and that it be kept informed in this regard.*

290. *The Committee notes that the Government has not sent its observations regarding the allegations that, owing to the list of union members' names being passed on, the companies' employees appear to be the victims of anti-union discrimination by the other companies in the* maquila *sector, thereby making it impossible to hire those workers anywhere else. The Committee notes that these allegations are made in a context in which the union of the company in question was, it would appear, negotiating a collective agreement with the enterprise. Recalling that workers in export processing zones, like other workers, without distinction whatsoever, should enjoy the trade union rights provided for by the freedom of association Conventions [see* ***Digest****, op. cit., para. 264], that the practice involving the blacklisting of trade union officials or members constitutes a serious threat to the free exercise of trade union rights and, in general, that governments should take stringent measures to combat such practices [see* ***Digest****, op. cit., para. 803], the Committee requests the Government to investigate without delay the allegations referred to and to keep it informed of the outcome of the investigation.*

291. *The Committee notes that both the allegations by the complainant and the Government observations coincide in that the company was closed down suddenly on 18 June 2011 in the midst of the meetings to negotiate the collective agreement, held from 6 to 20 June 2011. In the light of the records of the four collective agreement bargaining meetings*

produced by the Ministry of Labour, the Committee notes that the meetings held on 6, 10, 13 and 17 June gave rise to substantive negotiations on the content of a collective labour agreement, and the approval of 17 clauses designed to govern labour relations and conditions within the company. It notes also that those negotiations do not mention the forthcoming closure of the company or its possible economic difficulties. Finally, based on the information provided by the Government, the Committee notes that the inspection visit following the dismissal of the company's 270 workers simply noted the cessation of the textile maquila *activity in the workplace and its replacement with reduced unbleached fabric production activity but that, by contrast, no thorough investigation had taken place to determine the possible anti-union motives of the cessation of activities.*

292. *In the light of the above information, the Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see* ***Digest****, op. cit. para. 934] and that although the genuine closure of companies is not contrary to the principle that both employers and trade unions should negotiate in good faith, and make efforts to reach an agreement, the closure and lay-off of employees specifically in response to the exercise of trade union rights is tantamount to the denial of such rights [see Case No. 2745, Report No. 360, June 2011, para. 1056].*

293. *The Committee urges the Government to carry out without delay an investigation into the possible anti-union nature of the cessation of activities and to keep it informed of the outcome of the investigation. Should the alleged anti-union nature of the cessation be proved, and in noting that the company maintained reduced activity, the Committee requests the Government to seek, in proportion with the current scope of activity of the enterprise, the reinstatement of individual workers dismissed, and to ensure that the workers who cannot be reinstated be paid suitable compensation, which would represent a sufficiently dissuasive sanction, taking into account any indemnities already received in the framework of the agreement between the trade union and the enterprise in July 2011.*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary measures, including introducing legislation, to ensure that the lists of union members' names are not communicated to the employer and that it be kept informed in this regard.

(b) The Committee requests the Government to investigate without delay the allegations of anti-union discrimination that appear to prevent the hiring of Gama workers in the maquila sector and to keep it informed of the outcome of the investigation.

(c) The Committee urges the Government to carry out without delay a thorough investigation into the possible anti-union nature of the cessation of activities within the company in question and to keep it informed of the outcome of the investigation. Should the alleged anti-union nature of the cessation be proved, and in noting that the company maintained reduced activity, the Committee requests the Government to seek, in proportion with the current scope of activity of the enterprise, the reinstatement of individual workers dismissed and to ensure that the workers who cannot be reinstated be paid

suitable compensation, which would represent a sufficiently dissuasive sanction, taking into account any indemnities already received in the framework of the agreement concluded between the trade union and the enterprise in July 2011.

CASE NO. 2928

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

Complaint against the Government of Ecuador presented by the General Union of Workers of Ecuador (UGTE)

Allegations: The complainant organization alleges that the Ministry of Industrial Relations is denying the right of workers and their organizations to file collective claims by means of decisions that dismiss lists of demands, declare strike movements unlawful and subsequently authorize the dismissal of striking workers

295. The complaint is contained in a communication dated 29 November 2011 from the General Union of Workers of Ecuador (UGTE).

296. The Government sent its observations in a communication dated 5 August 2013.

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

A. The complainant's allegations

298. In its communication of 29 November 2011, the complainant organization alleges that the Ministry of Industrial Relations, which is the body responsible for conducting and coordinating State labour policy, has repeatedly denied the right of workers and their organizations to file collective claims by assuming powers and functions that pertain exclusively to conciliation and arbitration courts. In this regard, the complainant organization states that labour inspectors, who are public servants appointed by the Ministry in question, dismissed, on five separate occasions, five different lists of demands submitted by the workers of Sacos Durán Reysac SA for alleged non-compliance with civil procedure requirements, the confirmation of which should be the exclusive responsibility of conciliation and arbitration courts, when, in accordance with the provisions of the Labour Code, they should have ordered the establishment of a conciliation and arbitration court to resolve the collective disputes in question. The workers affected filed criminal complaints against the labour inspectors who had dismissed the lists of demands.

299. The complainant organization adds that, following the refusal to process the lists of demands, the Regional Director for Labour of the Litoral region declared the strike launched by the workers of the abovementioned company unlawful, despite it being the

exclusive responsibility of the conciliation and arbitration courts to determine the lawfulness of the strike. Lastly, the organization adds that the above general labour directorate unlawfully approved the dismissal of 73 workers from the abovementioned company, which amounted to almost 50 per cent of the workforce, for having participated in the strike movement.

300. The complainant organization also alleges that workers from another two companies, Maxigraf SA and Acromax chemical and pharmaceutical laboratory, have been waiting for more than a year for the appointed labour inspectors to order the establishment of the conciliation and arbitration courts following the submission of their lists of demands.

301. Lastly, the complainant organization adds that judicial remedies have not solved the problems caused by the Ministry's attitude because of the control exercised by the executive over the judiciary by impeding the initiated proceedings on the grounds of alleged procedural irregularities that should not occur in the domain of labour rights.

B. The Government's reply

302. In its reply dated 5 August 2013, the Government indicates that the different lists of demands submitted by the special works council of Sacos Durán Reysac SA were repeatedly dismissed by the labour inspectors because they did not comply with the legal provisions according to which the assembly, when establishing a works council, should be composed of more than 50 per cent of the workers and of no fewer than 30 workers, for which reason the Ministry of Industrial Relations was unable to proceed with the notification of the request in question.

303. As to the strike held by the workers of the abovementioned company, the Government states that it merely ordered an inspection to confirm the work stoppage. The inspectors noted that the main entrance of the company was closed and barred and that the workers were granting or denying access to the premises. The workers informed the inspectors that they had been on strike since 16 October 2011 and that their lawyer would shortly provide them with an official strike notice. The Government also indicates that, according to the company's security guards, in the early hours of the morning, a group of hooded individuals armed with sticks who did not belong to the company entered the premises, which led the inspectors to conclude that the work stoppage did not comply with the provisions of sections 467 and 497 of the Labour Code. The labour inspectorate's decision to approve the dismissal of 73 workers of the company, taken in accordance with sections 172 and 183 of the Labour Code, was due to the hostile takeover of the company's premises, it being confirmed that the individuals who claimed to act on behalf of the company's workers were not in fact their representatives and moreover forcibly took over the company's premises in a manner that was both unlawful and arbitrary.

304. Lastly, the Government adds that the Ministry of Industrial Relations guarantees the right of workers to freedom of association and to form labour organizations, which, in the abovementioned case, has allowed the workers to associate into the Reysac SA workers' union having ensured that the individuals representing them were their duly authorized representatives.

305. As to the allegations concerning Maxigraf SA and Acromax chemical and pharmaceutical laboratory, the Government indicates that, in both cases, the lists of demands were processed in timely fashion by the public officials of the Ministry of Industrial Relations. In the first case, prior to the establishment of the conciliation and arbitration court, the parties submitted a document containing a mutual agreement in which each of the points contained in the list of demands submitted at the beginning of the procedure was resolved, thereby bringing the dispute to an end. In the second case, the file was submitted to the

Directorate for Labour Mediation. During the mediation hearing held on 8 February 2013, the parties signed a settlement agreement in which they agreed upon all the points contained in the list of demands.

C. The Committee's conclusions

306. *The Committee recalls that the present case refers to the alleged denial by the Ministry of Industrial Relations (the Ministry) of the right of workers and their organizations to file collective claims, which, in a number of cases, resulted in the unjustified failure to process lists of demands and, in one of the collective disputes where a number of lists of demands had not been received by the Ministry, in the Ministry declaring a subsequent strike movement unlawful and later authorizing the dismissal of 73 workers. In addition, the Committee notes that, according to the complainant organization, judicial remedies would not solve the problems caused by the Ministry's attitude because of the control that the executive exercises over the judiciary.*

307. *The Committee takes note of the Government's observations to the effect that, in the first case mentioned in the complaint, the labour inspectorate had to dismiss several lists of demands because they did not comply with the legal provisions according to which works councils should be composed of more than 50 per cent of the workers and of no fewer than 30 workers. As regards the strike mentioned in the complaint, the labour inspectors noted that the company's premises had been the subject of a hostile takeover, and that the work stoppage was not in line with the provisions of the Labour Code which justified the decision to authorize the dismissal of 73 workers; in that collective dispute, the individuals who acted on behalf of the workers had not been duly authorized to do so by the workers in question; in the other two cases mentioned by the complainant organization, the lists of demands were processed in timely fashion by the labour inspectorate and the collective disputes in question were resolved by the parties signing settlement agreements.*

308. *As to the dismissal of five lists of demands submitted by workers of the company Reysac SA, the Committee takes note of the Government's statement to the effect that the labour administration's decision could be attributed to the failure to comply with the legal provisions according to which works councils and special works councils, which are the only workers' bodies entitled to submit lists of demands, should be composed of more than 50 per cent of the workers and of no fewer than 30 workers.*

309. *In this regard, the Committee recalls the principle according to which "while a minimum membership requirement is not in itself incompatible with Convention No. 87, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 287]. In this connection, the Committee has already had the opportunity to indicate, including in cases related to Ecuador [see Case No. 2138, Report No. 327, March 2002, para. 547], that "the legal requirement laid down in the Labour Code for a minimum of 30 workers to establish a trade union should be reduced in order not to hinder the establishment of trade unions at enterprises, especially taking into account the very significant proportion of small enterprises in the country" [see* ***Digest****, op. cit., para. 286].*

310. *In the light of the above, and also recalling the repeated observations of the Committee of Experts on the Application of Conventions and Recommendations in this regard, the Committee once again requests the Government to take the necessary measures to repeal or amend the provisions of the Labour Code that lay down the minimum requirement of 30 workers to establish associations or assemblies to organize works councils. The Committee requests the Government to keep it informed of developments in this regard.*

311. *The Committee also notes that, in the case concerning the abovementioned company, the Government indicates that the individuals who represented the workers in the collective dispute had not been duly authorized to do so by the workers in question, a requirement that has otherwise been met when establishing the Reysac SA workers' union. The Committee also notes that one of the lists of demands submitted by the company's special works council, a copy of which is appended to the complaint, indicates that the council had the support and signatures of 126 workers from the company, which would satisfy the legal requirements for establishing a council and submitting a list of demands.*

312. *Recalling the principle according to which "workers and their organizations should have the right to elect their representatives in full freedom and the latter should have the right to put forward claims on their behalf" [see* ***Digest****, op. cit., para. 389], the Committee requests the Government to explain why it refers to the individuals who represented the workers in the collective dispute in question as being unauthorized to do so, and to indicate whether and to what extent this aspect was taken into account when the lists of demands were dismissed and when the labour administration took its subsequent decisions on this case.*

313. *As to the alleged declaration of the illegality of the strike in the above company by a Regional Director of Labour, the Committee, while noting that, according to the complainant, the examination of the legality of the strike is the exclusive responsibility of the Conciliation and Arbitration Tribunal, recalls the principle that responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved [see* ***Digest****, op. cit., para. 628]. The Committee requests the Government to take the appropriate measures, including legislative if necessary, to ensure that, in all circumstances, the declaration of the legality or illegality of strikes does not lie with the government but with an independent body which has the confidence of the parties involved. The Committee requests the Government to keep it informed in this regard.*

314. *With respect to the decision issued by the labour inspection authorizing the dismissal of 73 workers for having participated in the strike and based on its finding of the hostile takeover of the company by non-company related persons, the Committee would first like to recall that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike [see* ***Digest****, op. cit., para. 667]. The Committee also recalls 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., para. 674]. The Committee requests the Government and the complainant to inform it of any judicial appeals filed against the decisions issued by the labour administration in this case, and expects that a decision will be issued by an independent body not only on the legality or illegality of the strike but also on whether the possible perpetration of acts of violence during the strike justifies the dismissal of all 73 workers whose employment was terminated as a result of their participation in the strike.*

315. *Lastly, as to the lists of demands submitted in the companies Maxigraf SA and Acromax chemical and pharmaceutical laboratory, the Committee takes note of the information provided by the Government indicating that, in both cases, the lists of demands were processed and that the collective disputes were resolved by the parties signing settlement agreements. Therefore, the Committee will not pursue its examination of the allegations relating to the two abovementioned companies.*

The Committee's recommendations

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

(a) The Committee once again requests the Government to take the necessary measures to repeal or amend the provisions of the Labour Code that lay down the minimum requirement of 30 workers to establish associations, works councils or assemblies to organize works councils. The Committee requests the Government to keep it informed of developments in this regard.

(b) The Committee requests the Government to explain why it refers to the individuals who represented the workers from the company Reysac SA in the collective dispute in question as being unauthorized to do so, and to indicate whether and to what extent this aspect was taken into account when the lists of demands were dismissed and when the labour administration took its subsequent decisions on this case.

(c) The Committee requests the Government to take the appropriate measures, including legislative if necessary, to ensure that, in the future, responsibility for declaring a strike lawful or unlawful does not lie with the Government but with an independent body which has the confidence of the parties involved. The Committee requests the Government to keep it informed of developments in this regard.

(d) The Committee requests the Government and the complainant to inform it of any judicial appeals filed against the decisions issued by the labour administration in this case, and expects that a decision will be issued by an independent body, not only on the legality or illegality of the strike, but also on whether the possible perpetration of acts of violence during the strike justified the dismissal of all 73 workers whose employment was terminated as a result of their participation in the strike.

CASE NO. 2947

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

Complaints against the Government of Spain presented by
- **the Trade Union Confederation of Workers' Committees (CC.OO.)**
- **the General Union of Workers (UGT)**
- **the Independent Central Workers' Union and Union of Civil Servants (CSIF)**
- **the Workers' Trade Union (USO) and**
- **many other national trade unions**

Allegations: Restrictive legislation on collective bargaining and trade union leave

317. The complaint is contained in a joint communication dated 10 May 2012 from the Trade Union Confederation of Workers' Committees (CC.OO.) and the General Union of Workers (UGT). These organizations submitted supplementary information and additional allegations in communications dated 22 June, 30 July and 29 October 2012 (the last of these communications – on issues related to the public sector – was also signed by the Independent Central Workers' Union and Union of Civil Servants (CSIF), the Workers' Trade Union (USO) and many other national public sector trade unions.

318. The Government submitted its comments in communications dated 5 July, 27 September and 28 November 2012, and 22 February and 30 December 2013.

319. Spain 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), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

320. In their communications dated 10 May, 22 June, 30 July and 29 October 2012, the CC.OO., UGT, CSIF, USO and many national trade unions complained that the right to freedom of association and the right to bargain collectively, recognized and guaranteed in ILO Conventions Nos 87, 98 and 154, had been violated by Royal Legislative Decree No. 3/2012 of 10 February 2012 on urgent measures for labour market reform, adopted by the Government and confirmed by the Congress of Deputies.

321. The complainant organizations explain that, on 25 January 2012, two trade unions, the Spanish Confederation of Business Organizations (CEOE) and the Spanish Confederation of Small and Medium-Sized Enterprises (CEPYME), signed the Second Agreement on Employment and Collective Bargaining 2012, 2013 and 2014 (II AENC), which was published in the *Official Gazette* of 6 February 2012. The II AENC is a binding three-year collective agreement that requires the signatory parties to increase their efforts to ensure that all their member organizations – within the framework of their freedom to negotiate – conduct themselves or modify their conduct "with a view to application of the criteria, guidelines and recommendations" contained therein. The parties used similar language in the record of the signing of the II AENC, which stated that the signed document was designed to "provide guidance for the negotiation of collective agreements during the period of its validity by setting criteria and making recommendations to be followed during collective bargaining". The Agreement covers the structure of collective bargaining and agrees and sets out a set of coordination and implementation rules that would govern collective bargaining in the future. The parties again express a preference for collective bargaining at the State or, failing that, the independent level in order to structure the bargaining, and they do not support the elimination of provincial agreements, which, in their view, provide coverage to a significant number of enterprises and workers. They also call for bargaining to be conducted at the enterprise level, whether through conventions or through enterprise agreements and pacts, in order to negotiate on issues relating to "working hours, functions and wages"; the internal flexibility aspects of such negotiations are covered in other parts of the Agreement.

322. However, the complainant organizations maintain that just two weeks later, on 10 February 2012, the Government adopted Royal Legislative Decree No. 3/2012 of 10 February 2012 on urgent measures for labour market reform (*Official Gazette* of 11 February 2012), which repealed and annulled most of the points that had been negotiated and agreed in the II AENC, particularly those relating to the structure of collective bargaining and the

regulation of internal flexibility; it has even been said that the legislation on the state of emergency "fails to reflect, even partially, its content, marginalizing and ignoring it".

323. The aforementioned Royal Legislative Decree was drafted and promoted by the Government immediately after the signing of the II AENC with no participation by or negotiation with the unions. There were no prior consultations on the substance of the regulations, nor was there any effort to hold functional consultations to allow for an exchange of views and expression of differing perspectives on the reform. The reported violations contained in Royal Legislative Decree No. 3/2012 continued after the adoption of Act No. 3/2012 of 6 July 2012 since the amendments to Spanish law resulting from the Congress of Deputies' consideration of the Legislative Decree in the form of a draft law were essentially a mere reiteration of what had already been regulated by Royal Legislative Decree No. 3/2012. Only certain ancillary points were modified. The complainant organizations state that they were not consulted by the Government before or after the adoption of the Royal Legislative Decree. Nonetheless, the CC.OO. and the UGT proposed amendments to the draft law under consideration by Parliament with respect to institutions and the role of lawmakers with a view to improving the regulations and avoiding future claims of unconstitutionality involving, as we understand it, certain provisions of the law which violate rights recognized in the Constitution and in the ILO Conventions that Spain has ratified. These proposals were completely ignored.

324. The complainant organizations then summarize the provisions of Royal Legislative Decree No. 3/2012 (now Act No. 3/2012):

(a) Primacy of application must be given to enterprise collective bargaining agreements, even against the shared desire of unions and employers' organizations. It is therefore prohibited to negotiate a change in or exception to the rule of the absolute priority of the enterprise agreement. The wording of Royal Legislative Decree No. 3/2012 with respect to the priority of enterprise agreements was modified with the addition of a statement that such agreements may be negotiated and different working conditions imposed at any time during the period of validity of higher level collective agreements (even prior to their expiration). Thus, voluntary collective bargaining between unions and employers' organizations is subject and subordinated to the legal precedence of the provisions of enterprise agreements, many of which are negotiated not by unions, but by non-union representatives. Moreover, this priority of application is the result not of a voluntary collective bargaining agreement; it was imposed by the Government first through Royal Legislative Decree No. 3/2012 and now through Act No. 3/2012; this constitutes unwarranted interference in the unions' right to bargain collectively.

(b) Enterprises can "disregard" – in other words, fail to implement – the provisions of a collective agreement on economic, technical, organizational or production-related grounds without the consent of the negotiators of the agreement, or even of the representatives of the enterprise's employees, by requiring binding administrative arbitration. With respect to the disregarding of, or general failure to apply, the working conditions established in a collective agreement, the amendments to article 82, paragraph 3, of the Workers' Statute that were introduced by Act No. 3/2012 may be summarized as follows: (1) the scope of the economic situation that warrants such disregard is clarified and some aspects of that situation that constitute grounds for dismissal and contract suspension are added; it is established that a decline in revenue or sales must have these characteristics: on the one hand, the reference is to ordinary revenue from the enterprise's production or to operating revenue and, on the other, revenue for two consecutive quarters must be lower than for the same quarters of the previous year, not the quarter immediately preceding the one in which the decline first occurred. The same criteria that apply to collective

dismissals are included through the aforementioned reference to two quarters rather than three as grounds for dismissal; and (2) in the event of a dispute between the enterprise and the workers' representatives regarding a failure to apply the provisions of a collective agreement, the dispute may be brought before the committee on the agreement; however, where this has not been requested or where the committee has failed to resolve the dispute, Act No. 3/2012 now requires the parties, or rather the party that is seeking not to implement the agreement – in other words, the employer – to follow the dispute settlement procedures set out in interprofessional agreements in accordance with article 82, paragraph 3, of the Workers' Statute. The new wording states:

> Where the consultations end without agreement being reached and the procedures mentioned in the previous paragraph are not applicable or have failed to resolve the dispute, any of the parties may refer the dispute to the National Advisory Committee on Collective Bargaining Agreements (CCNCC), if the failure to comply with the working conditions affects either branches of the enterprise located in more than one autonomous community, or the relevant bodies of such autonomous communities. The decisions of these bodies, which may be adopted internally or by an arbitrator whom they appoint for that purpose with the necessary guarantees to ensure the latter's impartiality, must issue a ruling within 25 days of the date on which the dispute was referred to the bodies in question. Such a decision shall have the same force as agreements reached during consultations and may only be appealed following the procedure and on the grounds set out in article 91. …

Therefore, according to the unions, if no solution is reached through these procedures, the parties are authorized to request the National Advisory Committee on Collective Bargaining (CCNCC) or an equivalent autonomous community body to issue a ruling or appoint an arbitrator. Act No. 3/2012 provides that this appointment shall be made with the necessary guarantees to ensure the impartiality; this has an impact on the status of the arbitrator. However, in light of the tripartite nature of the Committee and the fact that the Administration has the final say in resolving the dispute or appointing the arbitrator, the latter is not truly impartial, having been appointed by the Administration for the purpose of modifying the provisions of the labour laws established in a collective agreement during its period of validity. Additional Provision 5 empowers the CCNCC to intervene in the resolution and dispute processes during consultations on failure to apply the working conditions established in collective agreements and, because it is a tripartite body, the Administration plays the deciding role in the adoption of agreements.

(c) Internally negotiated flexibility has been replaced by a unilateral decision of the employer, which, without the workers' consent, may decide not to apply the working conditions agreed with the workers' representatives in enterprise agreements. Royal Legislative Decree No. 3/2012 made sweeping changes in the legal regime governing "significant changes in working conditions" under article 41 of the Workers' Statute by authorizing employers, sometimes after several rounds of consultations in which no agreement has been reached, to make unilateral modifications to extremely important working conditions established in pacts or collective agreements that were concluded with the workers' representatives authorized to negotiate comprehensive agreements. However, under the Spanish system of labour relations, problems in the functioning of an enterprise do not constitute grounds for employers to modify unilaterally the provisions of collective conventions and agreements, an effect that is disproportionate and incompatible with the effectiveness to be expected from collective bargaining. The empowerment of employers to modify at will the working conditions contained in a collective agreement or pact, including on matters as important as wages and working hours and even against the wishes of the workers' representatives, constitutes a violation of the guarantee of the effectiveness and binding force of collective agreements. It also violates the provisions of ILO

Conventions Nos 98 and 154 and of the Collective Agreements Recommendation, 1951 (No. 91), which endorse and guarantee the parties' mandatory compliance with the provisions of agreements reached through collective bargaining.

325. The complainant organizations also maintain that, through Royal Legislative Decree No. 20/2012 of 13 July 2012, the Government decided unilaterally to take steps to ensure budgetary stability and promote competition and to establish a series of measures reorganizing and rationalizing the public administrations, thereby affecting the statutory and contractual status of all public sector employees, or of State public sector employees alone.

326. These measures are justified because "the current economic situation and the need to reduce the public deficit without impairing the provision of essential public services makes it necessary to increase the efficiency of the use of public resources by the public administrations in order to make progress towards the essential goal, set within the constitutional framework and by the European Union, of achieving budgetary stability". Royal Legislative Decree No. 20/2012 focuses on emergency, urgent and unilateral measures "designed to rationalize and public administration staffing costs and to manage staff more efficiently ... reducing staffing costs and increasing the quality and productivity of public servants". The measures imposed unilaterally by the Government are quite diverse and may be summarized as follows:

- Wages have been reduced by eliminating the additional payment for the month of December 2012 (the bonus). This amounts to an average savings of around 8 per cent and brings the purchasing power of public servants to approximately that of 2012.

- The full benefit for temporary inability to work has been reduced and potential increases have been limited, thereby penalizing public servants who, owing to illness, are temporarily unable to work.

- Working hours in all public administrations have been reorganized across the board by drastically reducing the length of the annual holiday with pay and the number of personal days. This measure has also entailed a reduction in many other types of leave (including, among other things, maternity leave, flexible working hours and leave to care for a dependent relative) beyond the legal minimum; under Royal Legislative Decree No. 20/2012, they are no longer available to individuals or groups as the favourability principle and the principle of more favourable terms no longer apply.

- Trade union leave has been reduced in the public administrations and subsidiary bodies; this significantly lessens the number of hours with pay that may be used to carry out union or staff representation functions and of full-day waivers of attendance at the workplace.

- In future, collective bargaining in the public administrations will be greatly reduced since the binding force of any collective pact, agreement or convention is subject to the possibility that the public administrations may decide unilaterally to adopt adjustment measures or plans in order to reduce the public deficit. It is possible to "disregard" the provisions of conventions or pacts, regardless of the subject matter and without the need for consultation; the only requirement is to "inform" the unions.

327. The complainant organizations state that these measures have been implemented by suspending all public sector employee agreements, pacts and conventions and amending the legislation (primarily Act No. 7/2007, the Basic Statutes of the Public Service (EBEP)) that regulates the working conditions of public servants.

328. The complainant organizations report that all of this has been done without the required convocation of the negotiating committee, even though all of the issues in question are subject to compulsory negotiation pursuant to articles 37 and 38 of the aforementioned Act No. 7/2007. In other words, the Government issued Royal Legislative Decree No. 20/2012 without communicating, let alone negotiating, with the legitimately empowered unions. Just two months after Royal Legislative Decree No. 20/2012 was adopted by the Government and entered into force, the unions were informed at a routine meeting in the context of negotiations envisaged in article 38 of the EBEP. The Government provided this information to the unions because it had no intention to act of its own volition. At that meeting, the Administration made it clear that there could be no negotiation; it simply "read" the provisions of the Act to the unions on the negotiating committee. The Government has still not provided any reply or solution to the unions' questions regarding the harm that the Royal Legislative Decree has caused to public servants and their union representatives.

329. According to the complainants, by repealing provisions of all previous collective agreements, pacts and conventions between, on the one hand, the various public administrations (central, autonomous and local) and the rest of the public sector, and, on the other, all public servant unions that are members of the relevant general negotiating committees, the Government's unilateral decision amounts to elimination of the right to bargain collectively.

330. This unilateral imposition on the pretext of an urgent need to reduce the public deficit leaves no room whatsoever for negotiation and deprives the unions of their indisputable and primordial function of protecting the interests that they represent through the participation channels established in laws and conventions. Ultimately, the Government has raised to the status of a non-derogable public policy rule to which there can be no amendments a number of matters which, prior to the adoption of Royal Legislative Decree No. 20/2012, were subject to mandatory collective bargaining under the law (the 1987 EBEP). Articles 32 and 38 of this 1987 legislation first purport to "ensure compliance with collective conventions" and with "pacts and agreements", respectively, and then provide, on an exceptional basis, for the possibility of suspending or modifying them "on the grounds of a significant change in the economic situation". In that event, "the public administrations must inform the unions of the reasons for the suspension or modification". However, the Government did not negotiate with the unions the provisions of the aforementioned Royal Legislative Decree No. 20/2012 that concern public servants, nor did it invoke the emergency envisaged in articles 32 and 38; it simply declared that collective agreements, pacts and conventions concerning public sector employees which contained provisions conflicting with articles 1 to 16 of Royal Legislative Decree No. 20/2012 were "suspended". This is not an empowering provision in a public administration legislative act, but a directly applicable legal statement with immediate legal effects; this is proof of a premeditated violation of public servants' right to bargain collectively.

331. The complainant organizations further maintain that the Government's belligerent attitude towards collective bargaining will continue since Royal Legislative Decree No. 20/2012, in its Additional Provision 2, interprets articles 32 and 38 of the EBEP as follows: "It shall be understood, among other things, that this includes threats to the public interest arising from a significant change in the economic situation where the public administrations must adopt adjustment, public account rebalancing, economic or financial measures or plans in order to ensure budgetary stability or reduce the public deficit." There is no doubt that this statement authorizes disregard for the provisions of collective conventions or pacts; there is no limitation as to its scope and no stipulation that consultations be held, the only requirement being to inform the unions. This severely limits negotiations and makes them

subject to the unilateral will of the Administration while ignoring the role of unions and attacking the very heart of collective bargaining.

332. The complainant organizations further maintain that the right to time credit (trade union leave) is established in the additional provisions on freedom of association contained in article 28, paragraph 1, of the Constitution, which, according to a ruling of the Constitutional Court, covers both public servants and administration staff. However, article 10 of Royal Legislative Decree No. 20/2012 provides, with effect as from 1 October 2012, that:

> Within the framework of the public administrations and ancillary bodies, universities, foundations and societies, as from the entry into force of this Royal Legislative Decree, all union rights – whether referred to as such or by any other name – established in agreements on public servants or statutory personnel or in collective conventions and agreements on workers signed by their representatives or unions, the provisions of which go beyond those of Royal Legislative Decree No. 1/1995 of 24 March 1995 (adopting the revised Workers' Statute Act); Organization Act No. 11/1985 of 2 August 1985 (on freedom of association) and Act No. 7/2007 of 12 April 2007 (the EBEP) concerning hours with pay that may be used for the conduct of union or representation functions, for the appointment of union delegates or as full-day waivers of attendance at the workplace, as well as other union rights, shall be brought fully into line with the provisions of these legislative acts. Therefore, any collective pacts, agreements and conventions on such matters that have been signed and that go beyond the aforementioned provisions shall be repealed and without effect as from the entry into force of this Royal Legislative Decree. The foregoing is without prejudice to any future agreements reached exclusively in general negotiating committees in order to modify the obligations or work attendance regime of union representatives with a view to the effective performance of their representation and negotiation functions or to the proper exercise of other union rights.

333. The complainant organizations stress that revocation, pursuant to article 10 of Royal Legislative Decree No. 20/2012, of the expansion of union time credit that had been agreed *inter partes* during collective bargaining is a permanent structural measure, contrary to the time limits established in the principles of the Committee on Freedom of Association.

B. The Government's reply

334. In its communications of 5 July, 27 September and 28 November 2012 and 22 February and 30 December 2013, the Government states that, before evaluating the complainant organizations' allegations, it is essential to consider the context in which the challenged labour reforms were made. The situation in Spain in early 2012 made it necessary for the Government to take decisive, urgent action in several areas. One of its priorities was the labour market since the economic crisis that Spain had been experiencing since 2008 had highlighted the weaknesses of its institutional design. The seriousness of the current crisis is unprecedented. At the time of adoption of Royal Legislative Decree No. 3/2012, the available data from the most recent labour force survey indicated that the number of unemployed persons stood at 5,273,600, having risen by 295,300 during the fourth quarter of 2011 and by 57,000 since the fourth quarter of 2010. During the same period, the unemployment rate had risen by 1.33 points as compared with the third quarter and stood at 22.85 per cent. In other words, Spain has lost more jobs than the principal European economies: over 3.2 million since the beginning of the crisis and almost 100,000 per month during the quarter immediately preceding the 2012 labour reform, by which time there were as many as 1.5 million families in which all of the members were unemployed. The crisis has had a greater or lesser impact an all the European countries, but Spain has lost more jobs, more rapidly, than the principal European economies. From the first quarter of 2008 to the last quarter of 2011, 11 per cent of jobs were lost in Spain versus 2.5 per cent in the Eurozone.

335. The economic crisis that Spain is experiencing has highlighted the highly seasonal nature of employment and the enterprise cycle; this results in fluctuations that are uncommon in developed countries. From the very beginning of the crisis, unlike the experience of our neighbouring countries, Spanish enterprises have relied primarily on the termination of employment contracts rather than making greater use of internal flexibility measures. In Spanish enterprises, adjustments have been made through dismissals, not in working conditions. This choice is not accidental or capricious; it is a response to the weaknesses of our labour market, which is hampered, on the one hand, by a high percentage of temporary jobs – with less investment in training and a greater likelihood of dismissal – and, on the other, by a legal framework that has not sufficiently encouraged internal flexibility and collective bargaining that would make it easier for enterprises to adapt working conditions to changes in economic and production circumstances. It was easier to eliminate workers – by not extending or renewing temporary contracts or through so-called "express" dismissal – than to modify the working conditions in an attempt to preserve jobs, for example, through reductions in working hours and wages, an irregular distribution of working hours, a change in functions, and even temporary failure to apply the working conditions established in collective conventions.

336. The result of all these factors is a highly dualistic labour market. There is a large pool of workers with continuing contracts and, in most cases, wage increases, agreed during collective bargaining, that exceed the production and inflation rates, as well as a right to strong protection against dismissal. On the other hand, however, there is another large pool of workers with temporary contracts who do not enjoy the same protection from the dismissals that are enterprises' primary mechanism for responding to problems by making adjustments in working conditions (such as wage restraints and changes in working conditions) and who alternate between insecurity and unemployment.

337. This discrepancy is clearly inequitable and, moreover, has been particularly detrimental to the youth labour market. It is no accident that 27 per cent of the jobs lost during the fourth quarter of 2011, by comparison with the same quarter of the previous year, had been held by workers under 25 years of age; this number rises to over 50 per cent for workers under the age of 29. This is a consequence of the high percentage of young people who hold temporary jobs; 82.3 per cent of employed young people hold such jobs involuntarily. These workers on temporary contracts are the first to be dispensed with by enterprises, just as young workers with permanent contracts are likely to be the first to be dismissed, not because they are less productive than older workers with more seniority, but simply because they were the last to be hired by the enterprise and are therefore owed less severance pay. The duality is so great that the workers dispensed with are not those who make the greatest contribution to the enterprise, but those who can be dismissed at the lowest cost. The result is that by the end of 2011, virtually one of every two young jobseekers was unemployed.

338. It should therefore be borne in mind that the economic crisis that began in 2008 has made Spain the country with the highest unemployment rate in the European Union. The speed and intensity of the job loss in Spain is essentially a result of the ineffective relationship between the different types of flexibility – hiring, internal and dismissal – in labour market regulations. And, since the labour market reforms made since the beginning of the crisis have proved insufficient and ineffective in creating jobs, it became essential to address the structural weaknesses of the labour market so that Spain's economic recovery could begin.

339. Thus, the labour reform adopted by the Government through Royal Legislative Decree No. 3/2012 and, subsequently, Act No. 3/2012 of 6 July 2012, adopted after consideration by Parliament, merely sought to create conditions in Spain's labour market that would facilitate rapid improvement of the situation described above by, among other things, giving enterprises greater internal flexibility so that, when they experience changes or

difficulties, they could adapt to new conditions in order to preserve jobs rather than resorting to lay-offs as they had done in the past.

340. In that connection, the Government stresses that, following the adoption of the reform, various international organizations welcomed it. For example, according to the 27 July 2012 International Monetary Fund (IMF) report on Spain:

> On labour market policy, a profound labour reform was introduced in February with measures to reduce labour market duality (by lowering the dismissal costs of permanent workers for unfair dismissals) and wage rigidity and to increase firms' internal flexibility (by giving priority to firm level agreements over wider collective agreements). … Directors underlined the urgency of additional progress in boosting competition and jobs, given the high level of unemployment in particular among the youth. They welcomed the recent labour market measures, aimed at reducing market duality and wage rigidity, and increasing firms' internal flexibility. These efforts should be complemented with further steps to improve the product and service markets, and the enterprise environment. More broadly, Directors encouraged a rapid implementation of the government's structural reform agenda.

In its preliminary assessment with a view to the drafting of an economic report on Spain, the Organisation for Economic Co-operation and Development (OECD) noted that there had been considerable progress with the labour reform; the grounds for dismissal had been clarified, the amount of severance pay had been reduced and enterprises had been given greater freedom to adapt wages and working hours to changes in the economic situation.

341. The Government notes that the source of the complaint was the publication, in the *Official Gazette* of 11 February 2012, of Royal Legislative Decree No. 3/2012 of 10 February 2012 on urgent measures for labour market reform. In accordance with article 86, paragraph 2, of Spain's Constitution, this Legislative Decree was confirmed by the Congress of Deputies at its meeting of 8 March 2012. The confirmation agreement was published in the *Official Gazette* of 14 March 2012. The procedure for the handling of draft legislation is now complete; thus, Royal Legislative Decree No. 3/2012 has been repealed through an Act adopted by Parliament, Act No. 3/2012 of 7 July 2012, which has the same purpose.

342. In response to the allegation that no consultations were held, the Government states that it is difficult to reconcile the urgency of the situation – which, according to article 86 of Spain's Constitution, authorizes and justifies the executive power's adoption of provisions with the official rank of Legislative Decree and the substantive rank of law: "Where there is extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of legislative decrees" – with consultations. In any event, consultations need not correspond to the apparent implication of the complaint: that they must culminate in acceptance of the demands of those consulted. In that connection, it should be borne in mind that consultations in no way alter the responsibility of the party that will be taking the measures: in this case, the Government.

343. It should also be borne in mind that another legislative act, Royal Legislative Decree No. 7/2011 on urgent measures for the reform of collective bargaining, against which there have been no reported complaints, was published just eight months prior to the most recent labour reform. The measures adopted through Royal Legislative Decree No. 3/2012 are in keeping with Royal Legislative Decree No. 7/2011 and, in the context of the labour market reform and of the issuance of Royal Legislative Decree No. 7/2011, it was acknowledged that the social partners objected to reform of the agreements on collective bargaining and this objection culminated in the Government initiative to regulate collective bargaining in light of the urgency of the matter.

344. In this case, at the time when Royal Legislative Decree No. 3/2011 was issued, there was already awareness of the II AENC, published in the *Official Gazette* of 6 February 2012, the purpose of which is to provide guidance for bargaining and establish criteria for negotiating committees and which is therefore required to evaluate the circumstances and address several general issues relating to bargaining and the functioning of enterprises.

345. The introduction to the II AENC states that "these emergencies require action through specific measures designed to achieve economic growth leading to job creation as quickly as possible". In other words, the need for action without loss of time was recognized. The II AENC reflects agreement on measures relating to the bargaining structure and internal flexibility, the wage rates established in collective agreements, and other matters of equal interest and importance. The Agreement is a clear expression of the social partners' opinion of collective bargaining at that time, which, moreover, was quite close to the time of issuance of Royal Legislative Decree No. 3/2012. Nevertheless, and precisely because of the need to take measures as quickly as possible, to use the words of the II AENC itself, and not only with regard to some aspects of collective bargaining and internal flexibility, it was neither advisable nor possible to hold consultations on issues on which the social partners had already expressed their views on those occasions.

346. Moreover, article 86 of Spain's Constitution also authorizes the issuance of a legislative provision by the executive, not the legislative, power, without the need to follow the normal procedures for the drafting of legislation.

347. Another issue is that the measures ultimately adopted through the Royal Legislative Decree differed on some points from those advocated in the II AENC. But this in no way affects the extraordinary and urgent reasons for the issuance of such legislation by the executive power. In that regard, it should be reiterated that the executive power cannot abdicate its decision-making responsibility, particularly during crises when action must be taken without delay.

348. In addition, it is not true that, as stated in the complaint, Royal Legislative Decree No. 3/2012 repealed the II AENC. It must be acknowledged that, in a sense, the Royal Legislative Decree deals with certain issues differently from the II AENC, but it is also clear that the normative hierarchy principle requires that the negotiators of collective conventions ensure consistency with higher ranking norms, not those of lower rank. In short, the II AENC as a whole remains applicable within the normative hierarchy.

349. The authors of the complaint state, referring to the II AENC, that the Royal Legislative Decree "fails to reflect, even partially, its content, marginalizing and ignoring it". This is far from true; the Government has publicly stated that it welcomes the II AENC; it has congratulated the signatory parties and informed them of its hope that both the wage agreement aimed at holding down prices and the internal flexibility agreement negotiated will be implemented in lower level bargaining. The Government also points out that since the II AENC, which the unions consider to have been repealed, was signed by two parties, it is surprising that the other party has not taken a position on the matter.

350. Therefore, the accusation that the II AENC was "suspended or repealed by decree without the consent of the parties" must be rejected. Royal Legislative Decree No. 3/2012, which entered into force on 12 February 2012, simply contains transitional implementation rules concerning the validity of the agreements denounced on the date of its entry into force. A separate question, as noted above, is whether collective agreements in the broad sense are contrary to the normative hierarchy principle, which cannot be violated since, according to article 9, paragraph 3, of Spain's Constitution, "The Constitution guarantees the principle of legality, the normative hierarchy, the publication of legislation, the non-retroactivity of punitive provisions that are not conducive to or restrict human rights, legal certainty, the

accountability of public authorities and the prohibition of arbitrary action by those authorities". This provision is reflected in article 3 of the Worker's Statute.

351. The Government notes that, according to the Committee on Freedom of Association, tripartite consultations must be held before the Government submits draft legislation to Parliament; however, it explains that, in this case, it was a question of submitting to the legislature not draft legislation, but legislation authorized under article 86 of Spain's Constitution. In that respect, Act No. 50/1997 of 27 November 1997 on the organization, powers and functions of the Government makes no provision for the drafting of legislative decrees and thus does not call for the holding of consultations in such urgent cases, which are envisaged in the Constitution. Moreover, where there are urgent grounds for doing so, the Council of Ministers may even dispense with procedures, including consultations, provided that they are not prescriptive in nature, and may decide to adopt a draft law and submit it to the Congress of Deputies or, where appropriate, to the Senate without following those procedures.

352. With respect to the allegation that no consultations whatsoever were held with the most representative unions prior to the Spanish Government's adoption of Royal Legislative Decree No. 3/2012, the Government later denied the signatory unions' claim that no consultations whatsoever had been held prior to its adoption. At five technical meetings, held during February and March 2012 (on 15, 20 and 23 February and 5 and 12 March 2012) and attended by representatives of the Ministry of Employment and Social Security and of two unions, the UGT and the CC.OO., both parties had an opportunity to explain their positions and make suggestions concerning various issues relating to the labour reform. The first four meetings were held before the Congress of Deputies adopted the agreement confirming Royal Legislative Decree No. 3/2012 and, in any event, all five meetings preceded the date on which it was first considered by Parliament, which adopted it as Act No. 3/2012.

353. Furthermore, during this consideration by Parliament, which continued until 6 July 2012 – the date on which Act No. 3/2012, which replaced Royal Legislative Decree No. 3/2012, was ultimately adopted – the parliamentary groups had an opportunity to submit amendments to the draft law based on Royal Legislative Decree No. 3/2012. A total of 657 amendments were submitted to the Congress of Deputies and were discussed at length during this phase; later, 574 amendments were submitted to the Senate. During this consideration, a total of 74 amendments submitted by various parliamentary groups were adopted by the Congress of Deputies and 11 by the Senate. The signatory organizations themselves recognized, in a written statement, that "they had prepared draft amendments to the text of the draft law that was under consideration by Parliament" in order to improve the regulation, among other goals that were also set out in their statement. The organizations added that "these draft amendments were completely ignored". This claim is not borne out by the statistics on the amendments submitted during the consideration of Act No. 3/2012.

354. Moreover, three conclusions may be clearly inferred from the signatory organizations' written statement:

- The organizations themselves admit that they prepared proposed amendments to the draft law. This, together with the meetings between representatives of the Ministry of Employment and Social Security and two unions, the CC.OO. and the UGT, contradicts the allegation, earlier in the written statement, that there was no consultation with the unions either before or after the issuance of the legislation (Royal Legislative Decree No. 3/2012 of 10 February 2012) that prompted the original complaint. Preparation of the draft amendments mentioned by the unions led to the submission of proposed amendments by parliamentary groups that were present

during the consideration by Parliament; obviously, the unions themselves were not present although, as they themselves recognize by stating that they could prepare draft amendments, they were able to influence the process.

- Contrary to the unions' claim, the draft amendments containing their opinions were not ignored, but were considered and studied. A different question is whether the amendments containing those opinions were rejected, in whole or in part, but this is not the issue under consideration at this time.

- Furthermore, the answer to the question of who is alleged to have rejected the proposals (if indeed they were rejected) is certainly not the Government, against which, let it be recalled, the complaint is directed, but rather Spain's Parliament, which adopted Act No. 3/2012 of 6 July 2012 on urgent measures for labour market reform. It is Parliament that represents the Spanish people in whom national sovereignty is vested and that exercises the State's legislative power under Spain's Constitution.

355. As to whether the unions' proposals were rejected (not ignored) during Parliament's consideration of the draft law based on Royal Legislative Decree No. 3/2012, while, for the aforementioned reasons (the fact that Parliament, not the Government, is responsible for the text of Act No. 3/2012), there is no need to defend the Government on this point, it should be noted that the parliamentary consideration in question led to changes in various articles of the draft law, including those that gave rise to the complaint, which are directly related to the ILO Conventions mentioned therein. The final text of the Act is clearly the outcome of contributions from the various parliamentary groups.

356. Concerning the allegation that "primacy of application must be given to enterprise collective bargaining agreements", the Government declares that the contested provisions allude to "the *priority* of application of enterprise agreements over State sectoral agreements, independent agreements or lower-level agreements". "Primacy" and "priority" are not equivalent terms and this point should be clarified. According to the Royal Academy of the Spanish Language dictionary, "primacy" is defined as "the superiority, advantage or excellence of a thing over another similar thing", while "priority" is defined as "the precedence of a thing over another thing, whether in time or in importance". It is important to bear this in mind since improper word usage may lead to an incomplete understanding of the situation.

357. Therefore, before entering into a legal analysis, it must be reiterated that, under the Act, certain matters that are regulated in an enterprise agreement shall be given precedence of application over the regulations on these matters that are contained in higher level agreements. The Act in no way provides that the former regulation is superior.

358. The Government points out that:

- The priority – not primacy – of application is limited. In other words, as seen from a simple reading of new article 84, paragraph 2, of the Workers' Statute, priority is not given to all the provisions of the agreement, but only to certain parts and certain matters. Neither shall priority be given to everything that lies within its scope, nor shall the integrity of the higher level convention be undermined; it will remain fully applicable as before, except that its provisions relating to all or some of the matters that were legally included in and negotiated within the scope of the enterprise agreement will be partially inapplicable.

- Priority of application is nothing new or unheard of in Spanish labour law, nor is it a violation of the principles that govern the latter's application. As is generally known, the determination of which of the various norms – including norms with different hierarchical rank and different origin; general, sectoral and enterprise norms; and norms of prior and subsequent adoption – applies is based on the normative hierarchy (the minimum norm, the most favourable norm), tempered by consideration of which of the successive norms in force is applicable and of the mandatory or non-mandatory nature of the norm (irrevocability of rights), all of which must be tempered by the *pro operario* principle.

359. Neither is it new or unheard of in Spanish labour law that the normative hierarchy principle is tempered by the need to apply the norm that is closest to the situation in question. Both of these rules are the result of modifications to the Workers' Statute since its adoption in 1980.

360. In 1994, in a departure from the trend towards the centralization of conventions and agreements under article 83, paragraph 2, of Act No. 8/1980 of 10 March 1980, the Workers' Statute, which facilitated the concentration of power in the hands of the major unions and employers' organizations, the legislators decided to encourage decentralized levels of bargaining.

361. Under the new wording of article 84 of the Workers' Statute, agreements at a higher level than enterprise agreements may have an impact on agreements at an even higher level – with, however, certain guarantees of legitimacy for the negotiating parties and with the exclusion of certain matters. The Government considers that proximity of the source of regulations governing working conditions to the labour relations environment is a requirement for the success of those regulations since they will be more closely aligned with the circumstances in which the labour relations are conducted. Thus, the lawmakers encouraged the establishment of independent but more limited collective bargaining frameworks when the negotiating parties so desire.

362. Prior to the adoption of Royal Legislative Decree No. 3/2012, which is being challenged by the complainants, Royal Legislative Decree No. 7/2011 of 10 June 2011 on urgent measures for the reform of collective bargaining provided that:

> Except where a State or autonomous community collective agreement or convention negotiated pursuant to article 83, paragraph 2, establishes different rules concerning the structure of collective bargaining or the concurrency of conventions, the regulation of conditions in an enterprise agreement shall have priority of application over a State sectoral agreement, an autonomous community agreement or an agreement of lesser scope on the following matters:
>
> (a) the amount of the basic wage and wage supplements, including those associated with the status and performance of the enterprise;
>
> (b) bonuses, overtime pay and specific compensation for shift work;
>
> (c) working hours and the distribution of working time, shift work schedules and annual holiday planning;
>
> (d) adaptation of the job classification system to the circumstances of the enterprise;
>
> (e) adaptation of the aspects of hiring procedures that fall within the scope of enterprise conventions under this Act;
>
> (f) measures designed to promote a balance between work, the family and social life.

On such matters, the collective agreements of groups of enterprises or of enterprises that are part of the same organization or production system and are identified as such, mentioned in article 87, paragraph 1, shall have the same priority of application.

The agreements and collective conventions mentioned in article 83, paragraph 2, may expand the aforementioned list of working conditions.

363. Thus, as can be observed, enterprises have been given greater collective bargaining capacity as compared with sectoral agreements on matters such as the base wage, wage supplements, working hours and the distribution of working time in order to encourage flexibility and to adapt working conditions to the specific, concrete circumstances of enterprises.

364. To summarize, in the past, the lawmakers have already encouraged decentralization by distributing exclusive or shared competencies among the various types of collective bargaining. Through a series of reforms, efforts have been made to encourage decentralization wherever possible by promoting more enterprise-centred collective bargaining. This decentralizing normative process, which was not challenged before the ILO at the time, is similar in nature to the process established by Royal Legislative Decree No. 3/2012 and Act No. 3/2012, which did not then, and does not now, entail restriction of the free choice of the bargaining unit or prohibition of the opening of contractual discussions at certain levels.

365. It must also be borne in mind that, in light of the inviolability of the workers' rights recognized in collective agreements, Act No. 11/1994 paved the way for modification of those rights by adding to article 82 a new paragraph 4, which states: "4. A collective agreement adopted at a later date than a previous agreement may modify the rights set out in the former. In that event, the regulations contained in the new collective agreement shall apply in full." This modification was, of course, challenged by the unions but, to the knowledge of the Ministry of Labour, no complaint such as this one was submitted. The reason for the unions' challenge was that the Act modified collective bargaining, and therefore labour relations; this meant that, in the future, no right arising from collective bargaining could be considered established and that it would be necessary to decide on a case-by-case basis, by agreement between the parties, what had been established in previous instruments and what could be established for the future. This situation created the dizzying prospect of having to begin from scratch with each collective bargaining session, a scenario that is repeating itself today as a result of regulation of what has been called the "stability" of the agreement or extension of the period of validity of its normative clauses, which directly establish working conditions, beyond the initially agreed time period even if the agreement is denounced.

366. The normative change that has been introduced is fully consistent with the principle of free and voluntary collective bargaining since it in no way stipulates the level of such bargaining. In any event, the decision as to the bargaining level is subject to the will of the parties. On this point, however, the complainant organizations appear to have forgotten that the new legislation allows authorized parties to negotiate agreements at the enterprise level, just as they are empowered to negotiate collective agreements at a higher level. In no way does it require collective bargaining at the enterprise level since, in any event, it is for the parties authorized to negotiate enterprise agreements to decide whether to negotiate an agreement at that level or to apply a higher level agreement. A separate issue is that, once the parties authorized to negotiate an enterprise agreement have elected to do so and signed the agreement, the latter is given priority of application over higher level agreements, albeit only on certain matters. This simply means that a rule of concurrence among agreements of differing scope has been established; it in no way entails a violation of the right to bargain collectively.

367. Therefore, the new legislation is fully consistent with the principles established in paragraphs 988 and 989 of the *Digest of decisions and principles of the Freedom of Association Committee* of the Governing Body of the ILO, fifth (revised) edition, 2006:

> 988. According to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and, subsequently, the level of negotiation should not be imposed by law, by decision of the administrative authority or by the case-law of the administrative labour authority.
>
> 989. The determination of the bargaining level is essentially a matter to be left to the discretion of the parties. Thus, the Committee does not consider the refusal by employers to bargain at a particular level as an infringement of freedom of association.

368. With regard to the bargaining level, it should also be borne in mind that, according to Paragraph 4(1) of the Collective Bargaining Recommendation, 1981 (No. 163), "Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels." Similarly, the Committee of Experts, having recalled that the right to bargain collectively should also be granted to federations and confederations and rejected any prohibition of the exercise of that right, has stated that "legislation which makes it compulsory for collective bargaining to take place at a higher level (sector, branch of activity, etc.) also raises problems of compatibility with the Convention", and that "the choice should normally be made by the partners themselves", since "they are in the best position to decide the most appropriate bargaining level ...".

369. Neither Royal Legislative Decree No. 3/2012 nor Act No. 3/2012 imposes appropriate bargaining units. Article 83, paragraph 1, of the Workers' Statute states that all collective agreements shall have the scope of application agreed by the parties. Now, as in the past, it is for workers' and employers' representatives to decide where they will exercise the power to regulate working relations that is implied by the right to bargain collectively. Having done so, they must also decide which working relations will be subject to their authority by establishing the scope of application of the collective agreement.

370. Furthermore, the decision to give priority of application to enterprise agreements, while limited to certain matters, was not taken on a whim; it was motivated by the need to allow a number of matters to be negotiated by preference at the enterprise level on the understanding that this is the most appropriate place to deal with such matters. On that point, it should be stressed that this idea was shared by the unions that signed the complaint, at least until a few months ago. For example, in the II AENC (adopted on 30 January 2012), which was signed by the employers' organizations and by the two unions that have signed the complaint, states, in its section on the structure of collective bargaining, that "sectoral agreements should encourage negotiation at the enterprise level, at the initiative of the concerned parties, on working hours, functions and wages because this is the most appropriate place to deal with such matters."

371. In that connection, in the statement of reasons for Act No. 3/2012, it is recognized that:

> … the previous labour market reform (Royal Legislative Decree No. 7/2011 of 10 June 2011 on urgent measures for the reform of collective bargaining) also sought to modify the structure of collective bargaining by giving enterprise agreements priority of application over other agreements on a number of matters that are considered essential to the flexible management of working conditions. In practice, however, the decentralization of collective bargaining was to be effected through State or autonomous community agreements; this could hinder that priority of application. The innovation that is now being made is aimed specifically at ensuring the decentralization of agreements so as to facilitate the negotiation of working

conditions at the level closest and most appropriate to the real situation of enterprises and their employees.

372. On this matter, it is interesting to refer to the recent National High Court Labour Chamber Judgment No. 0095/2012, issued on 10 September 2012, which repealed, as from 12 February 2012 (the date on which Royal Legislative Decree No. 3/2012 of 10 February 2012 on urgent measures for labour market reform entered into force), portions of several articles of the Fifth Collective Agreement on the Cement Products Sector, signed on 21 February 2012, which, under then article 84, paragraph 2, of the Workers' Statute (on wage rates and the distribution of working time), established that that sectoral agreement would be given priority of application over lower-level agreements, including enterprise agreements. The court considered that this was a violation of the provisions of article 84, paragraph 2, of the Workers' Statute, which, as amended by the aforementioned Royal Legislative Decree, gave enterprise agreements priority of application over State sectoral agreements, autonomous community agreements or lower-level agreements on a number of matters that expressly included wage rates, working hours and the distribution of working time.

373. This was the argument made in the Chamber's judgment of 10 May 2012:

> Collective agreements are norms that have binding force and effects only within the limits established by law", citing, in that connection, Constitutional Court Judgment No. 210/1990. In its judgment of 18 January 2000, the Supreme Court stated that "although collective bargaining is grounded in and based on the Constitution (article 37, paragraph 1), the Constitution also establishes that the law takes precedence over agreements; for example, article 7 establishes that the parties to such agreements, unions and employers' organizations, must respect the law. As stated in the aforementioned Judgment No. 58/1985 (*Repertorio del Tribunal Constitucional* (RTC) 1985, 58) "the incorporation of collective agreements into the official system of sources of law, following the principle of the uniformity of the legal system, requires … respect for generally accepted peremptory norms, which, owing to their higher rank in the normative hierarchy, have the potential to restrict collective bargaining and may also, in exceptional cases, have full jurisdiction over certain matters which are therefore not subject to collective bargaining.

374. With respect to the allegations concerning the implications of the aforementioned new article 84, paragraph 2, of the Workers' Statute, which expressly provides for the negotiation of enterprise agreements while higher level agreements are in force (an amendment introduced by Parliament), from which the unions conclude not only that the alleged violation of the right to bargain collectively and of the binding force of agreements has not been corrected, but that it has been expanded and strengthened, the Government notes that new article 84 of the Workers' Statute regulates the rules governing the concurrence of agreements with differing scope. The general rule, established in article 84, paragraph 1, of the Workers' Statute (on prohibition of the concurrence of agreements with differing scope), is supplemented by a series of additional rules, one of which gives enterprise agreements priority of application with respect to certain issues mentioned in paragraph 2 of that article. However, it is clear that in order for different agreements to "concur". But in order for different agreements to "concur", the first step in determining which of them has priority of application as envisaged in article 84 of the Workers' Statute is obviously to consider the "history" of the concurrent agreements. Unless two or more agreements have been negotiated in the past and there is uncertainty as to which of them is applicable, there is clearly no problem to resolve. Article 84 is based on the assumption that a de facto conflict has arisen between two or more collective agreements and provides rules for resolving such conflicts. Logically, this will occur where several such agreements have been negotiated and signed in succession (an agreement is signed and, subsequently, one or more agreements conflict with it) since it is extremely difficult to imagine a scenario in which the concurrent agreements were negotiated and signed at the exact same time.

375. Thus, since the addition to article 84, paragraph 2(1), of the Workers' Statute does not alter the regime that preceded the labour reform, the potential for collective agreements to be negotiated by the parties authorized to do so (including at the enterprise level) has always existed within Spain's system of labour law. The sole purpose of the modification is to preserve the potential to negotiate enterprise agreements subsequent to higher level agreements as a prerequisite for giving them priority of application.

376. Therefore, the fact that a collective agreement was negotiated while another agreement or differing scope was in force has never affected its validity: the negotiated agreement is valid and cannot be repealed. A separate but extremely important issue is whether the agreement, assuming that it is valid, can be applied under the established legislation governing conflicts between concurrent agreements.

377. In conclusion, neither Royal Legislative Decree No. 3/2012 nor Act No. 3/2012 dictates bargaining levels or constitutes lawmakers' interference in the negotiating parties' freedom to use whatever bargaining level they wish; they may continue to do so. As proof that the lawmakers' preference for giving enterprise agreements priority of application does not affect the right to bargain collectively, from the date on which Royal Legislative Decree No. 3/2012 entered into force until 16 November 2012, with the labour reform in full effect, a total of 28 State or supra-autonomous community sectoral collective agreements, nine autonomous community sectoral collective agreements and 177 provincial sectoral collective agreements were legally registered, even though all of them were of broader scope than enterprise agreements.

378. The Government adds that it rejects the statement in the complaint that the priority given to enterprise agreements has totally and unconditionally annulled the binding nature of collective bargaining. The binding force of collective agreements is guaranteed under Spain's Constitution (article 37, paragraph 1) and through recognition of the authorized parties, who take the initiative in deciding on their scope of application and negotiate in good faith until they reach an agreement that will be binding for as long as it is in force. The changes made do not affect the right to bargain collectively or to freedom of association, but they do modify the bargaining structure and the relationship between agreements of differing scope, which have been regulated by law since 1980.

379. With regard to the allegation that enterprises can "disregard" – in other words, fail to implement – the provisions of a collective agreement on economic, technical organizational or production-related grounds, without the consent of the negotiators of the agreement or even of the representatives of the enterprise's employees, by requiring binding administrative arbitration, the Government recalls that, under many European labour law systems, collective agreements are binding only on the signatory parties (this is the case in France, Germany, Italy, the Netherlands, Portugal and Sweden), although it is possible, in some cases, for enterprises that were not represented at the negotiations to become parties to the agreement; moreover, some legal systems even allow the scope of a collective agreement to be expanded through a governmental act or decision, making it universally binding within the functional and geographical scope of its application. In that connection, Spain's Workers' Statute distinguishes between two types of collective agreements: (1) State collective agreements, which are negotiated following the procedures set out in the Statute; this type of agreement has the force of law and general or *erga omnes* scope. Thus, as stated in article 82, paragraph 3, of the Statute, they "are binding on all employers and employees included in their scope of application for as long as they are in force"; and (2) extra-State collective conventions, also known as collective agreements or pacts, which are negotiated without regard for the Workers' Statute requirement that the signatories be initially authorized and empowered; these agreements have contractual status and are binding only on the contracting parties and the employees and employers directly represented by them.

380. Thus, in Spain, unlike the situation under other labour law regimes, enterprises are not free to decide whether to apply a State collective agreement even where the enterprise was not directly involved, nor is it a member of an employers' organization that was involved, in the negotiation of the agreement. The agreement is binding on enterprises by the mere fact that they fall within its scope of application. In the case of such legal regulation (which, it should be stressed, is not the case under other legal systems, where agreements are binding only on the signatory parties), it is far more logical for a binding agreement to be "disregarded", particularly as this potential appears to be significantly limited not only in the situations in which it may occur, but in the matters to which it can apply.

381. All of the legislative amendments introduced by Act No. 3/2012 – setting aside issues not raised in the complaint, such as the extent of the economic situation that constitutes grounds for non-application under other provisions of the reform legislation (such as collective dismissals, contract suspensions and reduced working hours) – increase collective autonomy in the settlement of disputes arising from a lack of agreement concerning non-application of the working conditions on economic, technical, organizational or production-related grounds. They also make it clear that the procedure for the settlement of such disputes is ancillary to the established collective bargaining dispute settlement procedures and provide additional guarantees with a view to the proper use of this internal flexibility instrument.

382. The following is a list of these changes and their significance and scope:

– The text of Royal Legislative Decree No. 3/2012 stated that the parties "will be able to" employ the established collective bargaining dispute settlement procedures before bringing their dispute before the CCNCC. This might be interpreted as meaning that the parties have the option of bringing it directly before the CCNCC. The final text of the legislation makes it clear that the aforementioned procedures must first be attempted. To that end, the Act states that the parties "must" employ them; this means that failure to meet this requirement within the prescribed time period precludes initiating proceedings before the CCNCC.

– Whereas the previous version (the Royal Legislative Decree) stated that in order to bring a dispute before the CCNCC the parties must not only have failed to reach agreement but must "not have followed" the established collective bargaining dispute settlement procedures, the final version of the legislation authorizes use of the CCNCC only where these procedures "were not applicable"; this stresses the ancillary nature of the CCNCC as compared with the established collective bargaining dispute settlement procedures. Thus, it is clear that where collective bargaining procedures are available, their use by the parties is compulsory, not optional.

– Both before and after Parliament's consideration of the draft act, access to the CCNCC was allowed where the established collective bargaining dispute settlement procedures "had not resolved the dispute"; this is also consistent with the principle of subsidiarity that governs proceedings before the CCNCC. In that connection, it should be noted that the Workers' Statute itself indicates, in article 85, paragraph 3(c), on the minimum content of agreements, that such agreements must include, among other things:

> (c) Procedures for the effective settlement of disputes arising from non-application of the working conditions mentioned in article 82, paragraph 3, by adapting, where necessary, the procedures established for that purpose in State or autonomous community interprofessional agreements pursuant to the relevant articles thereof.

– Thus, in so far as a collective agreement includes – as provided by law – effective dispute settlement procedures and the use of these procedures is, as stated above, compulsory for the parties, there will be no need to bring proceedings before the CCNCC since the dispute will already have been resolved.

383. Clear proof of the ancillary nature of proceedings before the CCNCC is the fact that, from the date of the entry into force of the labour reform to 31 October 2012, a total of 477 agreements on non-application of the labour conditions established in collective agreements were registered with the labour authorities; this means that in none of those cases was there a need to bring proceedings before the CCNCC.

384. Thus, CCNCC involvement in the settlement of disputes is envisaged as a last resort. By no means can this be termed compulsory arbitration within the meaning of paragraph 992 of the *Digest*, op. cit., which states: "The imposition of a compulsory arbitration procedure if the parties do not reach agreement on a draft collective agreement raises problems in relation to the application of Convention No. 98."

385. Furthermore, even where a dispute is referred to the CCNCC, by no means can this be said to be an "arbitration of the authority", mentioned in article 993 of the aforementioned *Digest*: "Provisions which establish that, failing agreement between the parties, the points at issue in collective bargaining must be settled by the arbitration of the authority are not in conformity with the principle of voluntary negotiation contained in Article 4 of Convention No. 98."

386. Article 2 of Royal Decree No. 1362/2012 of 27 September 2012, which currently regulates the CCNCC, states that the latter "is a tripartite collegiate body comprising representatives of the State Administration and the most representative unions and employers' organizations, attached to the Ministry of Employment and Social Security through the Directorate-General for Employment, which fulfils its mandate with independence and functional autonomy". Thus, it is a tripartite committee consisting of the most representative unions, employers' organizations and the State Administration.

387. With respect to the exercise of decision-making functions in the event that, all the requirements having been met, the CCNCC must settle a dispute between an enterprise and the workers' representatives owing to a lack of agreement during the proceedings on non-application of the working conditions set out in the applicable collective agreement, as mentioned in article 82, paragraph 2, of the Workers' Statute, Royal Decree No. 1362/2012 provides that "the Committee may settle the dispute itself or appoint an arbiter, who shall be an impartial, independent expert. Where the parties to the dispute agree on the procedure to be followed in settling it, their wishes shall be followed. Otherwise, the choice of procedure shall lie with the Committee."

388. Thus, if the parties to the dispute agree to select one of these options, that is the option to be followed; in such cases, the CCNCC may not choose the procedure. Furthermore, in the event that it is decided to appoint an arbiter, the legislation provides that "where the parties to the dispute agree to the appointment of an arbiter, it is preferable for the arbiter to be appointed by mutual agreement". Failing such agreement, a procedure is envisaged whereby each of the three groups of representatives proposes two arbiters and, through rounds of voting in an order to be established in advance, one arbiter at a time is eliminated until only one remains.

389. Therefore, the legislation provides for sufficient mechanisms to ensure that the arbitration system is genuinely independent. In addition, the outcome of this procedure is in no way predetermined since, according to the regulations governing the CCNCC,

> the arbiter, having examined the competing claims, must rule on the allegation that the working conditions have not been applied and, to that end, shall consider those conditions in the context of the complaint and their impact on the employees in question. The award may uphold the claim in its entirety or propose non-application of the working conditions, but to a lesser extent. The arbiter may also rule on the length of the period during which the working conditions may not be applied.

390. These are, in any event, the responsibilities of the party charged with settling the dispute, whether the CCNCC or an appointed arbitrator. Therefore, whoever settles the non-application dispute shall determine not only the validity of the claim of non-application, but also whether the alleged non-application is as serious as the complainant maintains and what impact it has had on the affected workers. Thus, the fact that the legislation currently in force provides for the possibility of the challenged act in no way implies an automatic ruling on the case.

391. The first time that the CCNCC considered the substance of a case involving an allegation that working conditions had not been applied (in September 2012), in investigating the claim that the working conditions established in an enterprise agreement had not been applied, the CCNCC rejected the enterprise's request for permission not to apply the enterprise agreement, arguing essentially that "there has been no significant change in the enterprise's economic situation since the agreement extending the enterprise agreement and the wage conditions for 2012 and 2013 was signed at the end of April ... ".

392. In light of the foregoing, there is no doubt that, under the existing legislation, the procedure for the settlement of disputes regarding the non-application of working conditions established in a collective agreement is consistent with the principle recognized in paragraph 995 of the *Digest*, op. cit., that "in order to gain and retain the parties' confidence, any arbitration system should be truly independent and the outcomes of arbitration should not be predetermined by legislative criteria".

393. The Government also notes that, prior to the issuance of Royal Legislative Decree No. 2012, at present and since the adoption of Act No. 11/1994, significant changes in working conditions do not require administrative authorization; they are made by agreement with the workers' representatives. In the event of a disagreement arising during the consultation period, any of the parties may refer the dispute first to the joint committee on the collective agreement that the enterprise wishes not to apply – the implementation committee – and then, if no agreement is reached, to an independent dispute resolution procedure; only if there these various bodies fail to resolve the dispute may it be brought before the CCNCC.

394. With respect to the allegation that negotiated internal flexibility has been replaced by a unilateral decision of the employer, without the need for the employees' consent, not to apply the working conditions established in an enterprise agreement negotiated with the workers' representatives, the Government states that such decisions by an enterprise may naturally be appealed before the labour courts and that this has been the case since the 1994 labour reform with no reported complaints.

395. Enterprise agreements are a manifestation of the right of workers' and employers' representatives to bargain collectively, but they are not subject to the authorization and other criteria set out in the Workers' Statute. Thus, although they are binding on the parties and play a key role in labour relations, they do not fall within the scope of Title III of the Statute. Because the regime governing such agreements and compliance with the obligations arising therefrom is not part of the Workers' Statute, they fall under the heading of general contractual obligations. This means that, despite their binding nature, which has the force of law as between the parties, unilateral modification of the provisions of an agreement follows the logic of compliance with contractual obligations and may give

rise to compensation where there are insufficient grounds for a more severe penalty and, under certain circumstances, even where such grounds exist.

396. In any event, Royal Legislative Decree No. 3/2012 provides, with respect to this type of significant change, for the possibility that specific procedures may be established through collective bargaining; that consultations on the causes, the potential to reduce the effects and the measures needed to mitigate the impact on the affected persons may be held with the workers' representatives; that, during these consultations, the parties must negotiate in good faith in an effort to reach agreement; and that the parties may agree to replace the consultations by mediation or arbitration. The Government maintains that this legislation does not restrict the potential for negotiation in response to changes in collectively agreed working conditions; that any replacement of consultations must, in itself, be the subject of an agreement between the employer and the workers' representatives; that the complaint is unfounded; and, as noted above, that this regulation is nothing new since it is based on the 1994 labour reform.

397. In reply to the allegations concerning Royal Legislative Decree No. 20/2012 of 13 July 2012, the Government recalls that the courts have recognized Royal Legislative Decree as a constitutionally legal instrument for addressing so-called "difficult economic situations" owing to its ability to achieve the goal that justifies its urgency. Royal Legislative Decree No. 20/2012 of 13 July 2012 on measures to ensure budgetary stability and promote competition calls for the application of a set of fiscal measures on, among other things, employment and social security, infrastructures, trade liberalization, promotion of competition, provision of public assistance and rationalization of the Administration in response to Spain's current economic situation. The scope of these measures is far broader than would appear from the wording of the complaint. Their purpose is not to restrict collective bargaining; in fact, they were adopted in light of its principles and are appropriate to Spain's current socioeconomic situation.

398. The Government maintains that the serious recession that Spain's economy began to experience in 2008 and the resulting economic policy adopted at the time led to an accumulation of macroeconomic imbalances that were unsustainable for the country. Without the adoption of measures capable of correcting those imbalances, such as those that the Spanish Government has been taking since December 2011, it would be impossible to put the country back on the path of stable growth. Royal Legislative Decree No. 20/2012 of 13 July 2012 is part of that process and includes a variety of essential measures to ensure budgetary stability and promote competition:

– Measures to reorganize and rationalize public administrations; while these are the primary subject of the complaint, they should be considered not in isolation, but in light of the situation described and the set of structural measures that the Government has taken in order to address it. These measures are designed to:

  ■ achieve rationalization and reduce spending;

  ■ optimize resources;

  ■ improve management and transparency in the Administration;

  ■ achieve structural reduction and rationalization;

– Social security and employment measures. The latter are designed to:

  ■ focus protection on persons who have lost their jobs or require special protection;

  ■ promote the rehiring of unemployed persons by encouraging their rapid return to work;

  ■ generate the revenue needed to ensure the sustainability of the public benefit system;

  ■ strengthen the employment policy system based on the principle of efficiency so that the limited available resources can be allocated to the most useful initiatives for improving employability;

  ■ rationalize the benefit system.

– Measures to rationalize the public assistance scheme.

– Fiscal measures to supplement those adopted since the end of 2011, primarily through Royal Legislative Decree No. 20/2011 of 30 December 2011 on urgent budgetary, fiscal and financial measures for correction of the public deficit and Royal Legislative Decree No. 12/2012 of 30 March 2012. Changes in Government revenue during the first half of 2012 made it necessary to adopt additional measures through Royal Legislative Decree No. 20/2012, which focuses primarily on the value added tax, the corporation tax and, to a lesser extent, the personal income tax and excise duties.

– Other measures in the areas of trade liberalization, corporate internationalization, infrastructure, transport, housing and the elimination of imbalances between costs and revenue in the electricity sector.

399. The Government notes that several measures were adopted within the framework of article 135 of Spain's Constitution and of the international instruments to which the country is a party through the European Union. Article 135 states that all public administrations shall ensure that their actions are consistent with the principle of budgetary stability and that the State and the autonomous communities shall not incur structural deficits exceeding the limits that the European Union has set for its member States.

400. In order to follow the principles set out in this article of Spain's Constitution, it was necessary to adopt Organization Act No. 2/2012 of 27 April 2012 on budgetary stability and financial sustainability; economic and financial rebalancing plans were also adopted by the Fiscal and Financial Policy Council.

401. In that context, the economic relapse that Spain experienced in the first half of 2012 was extremely widespread and had serious consequences for budgetary sustainability and job loss. The first two quarters of 2012 saw a further decline in economic activity and the financial markets' loss of confidence in Spain, which was not unrelated to the various institutional problems in the Eurozone. For Spain, the most immediate consequence of this market instability was a severe tightening of financing conditions.

402. In response to this situation, in order to address the economic situation and reduce the public deficit, the Government needed to enact the structural reforms contained in Royal Legislative Decree No. 20/2012 of 13 July 2012, adopted within the framework of Spain's commitments to the European Union; these include:

– The specific recommendations to Spain made by the European Council in June 2012.

– The redirection of Spain's fiscal path as envisaged in the Stability and Growth Programme 2012–15, introduced at the Economic and Financial Affairs Council (ECOFIN) meeting of 10 July 2012, at which the Ministers of the Economy of the European Union decided to give Spain an extra year to correct its excessive deficit (recommendation on Spain's excessive debt and the macroeconomic framework associated with the new growth forecasts).

– The National Reform Programme 2012 as a framework for managing the process of rationalizing the public administrations to complement the exclusively fiscal adjustments and the reduction of administrative structures, which make it necessary to take steps to reduce staffing costs and increase the quality and productivity of public servants.

403. It should also be stressed that the present Government is not the only one to have taken measures of this kind. The previous Government also had occasion to adopt, through the same procedure and in an economic situation that had begun to develop in Spain but was not yet as serious at it later became, Royal Legislative Decree No. 8/2010 of 20 May 2010, through which emergency measures for reduction of the public deficit were adopted and which, like the present legislation, contains specific measures (on public employment, pensions, public assistance, health, local economies and finance, and other measures for controlling public spending). The Constitutional Court has had an opportunity to rule on several issues arising from Royal Legislative Decree No. 8/2010 and has stated that the measures contained therein do not constitute a violation of the right to bargain collectively.

404. It should also be borne in mind that the Constitutional Court, as an independent body, the ultimate interpreter of Spain's Constitution, the only body of its kind (Article 1 of the Constitutional Court Organization Act No. 2/1979 of 3 October 1979) and competent to determine whether legislation is consistent with the Constitution, has agreed to hear several appeals challenging the constitutionality of Act No. 3/2012 of 6 July 2012 and Royal Legislative Decree No. 20/2012 of 13 July 2012.

405. Therefore, the final wording of these articles will depend on the Court's decision and the relevant domestic remedies have not been exhausted. While no specific appeal regarding freedom of association and the right to bargain collectively has been brought before the Constitutional Court, the aforementioned appeals may have an indirect impact on those issues since, under article 37 of Act No. 7/2007 of 12 April 2007 (the EBEP), the public administration issues that may be negotiated include compensation and limits regarding work schedules, working hours, shifts, holidays and leave.

406. In that regard, it is necessary to bear in mind paragraph 29 of the document entitled "Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association", which states "When a case is being examined by an independent national jurisdiction whose procedures offer appropriate guarantees, and the Committee considers that the decision to be taken could provide additional information, it will suspend its examination of the case for a reasonable time to await this decision, provided that the delay thus encountered does not risk prejudicing the party whose rights have allegedly been infringed."

407. Therefore, since appeals against the legislation that is the subject of the dispute are pending before the Constitutional Court, the Government urges the Committee, on the basis of paragraph 29 of the aforementioned document, to grant the Government's request to defer consideration of the case until the Constitutional Court has issued a reasoned judgment on those appeals.

408. Concerning the substance of the issues raised in the allegations, the Government states that Royal Legislative Decree No. 20/2012 of 13 July 2012 on measures to ensure budgetary stability and promote competition was prompted by urgent and extraordinary necessity within the meaning of article 86 of Spain's Constitution since, according to the Legislative Decree's statement of reasons, "the current economic situation and the inescapable need to reduce the public deficit in order to achieve budgetary stability require that the proposed measures be adopted as urgently as possible with full respect for the Constitutional framework and that of the European Union".

409. Article 86 of Spain's Constitution provides that, in cases of extraordinary and urgent necessity, the Government may issue provisional legislation in the form of legislative decrees, which may not affect the organization of basic State institutions; the rights, duties and freedoms of citizens established in Title I of the Constitution; the regime of the autonomous communities; or the laws governing general elections.

410. Making use of this entitlement, the Government began the drafting of Royal Legislative Decree No. 20/2012.

411. Article 86 of Spain's Constitution also provides that legislative decrees must be submitted to the Congress of Deputies immediately for discussion and voting, after which they are no longer provisional.

412. Pursuant to the aforementioned provision of the Constitution, the Royal Legislative Decree was confirmed by a decision of the Congress of Deputies on 19 July 2012 (in other words, before the current allegations were made in the complainants' most recent communication) and therefore through the legislative mechanisms envisaged in Spain's legal system, having been endorsed by the body that represents the Spanish people – the Congress of Deputies – which Spain's Constitution has empowered to do so.

413. It should be noted that this event does not constitute, de facto or de jure, a "unilateral decision of the Government", as is wrongly stated in the complaint, but rather legislation drafted as provided in articles 81 et seq. of Spain's Constitution.

414. An examination of the arguments made throughout the statement of reasons for the Royal Legislative Decree and, more specifically, those that refer to improving the efficiency of the public administrations' use of public resources in order to "help achieve the essential goal of budgetary stability, which is based on the constitutional framework and that of the European Union", shows that Royal Legislative Decrees – a normative procedure envisaged for situations of urgent need – are an instrument that is fully appropriate in addressing what constitutional doctrine terms, as mentioned above, "difficult economic circumstances".

415. This economic situation has – as stated above – taken the form of a significant economic downturn that was "extremely widespread and had serious consequences for job loss", as well as "remaining imbalances in Spain's economy" and a serious "loss of confidence on the part of financial markets".

416. The Government recalls that the right of public servants to bargain collectively is recognized in the EBEP, adopted through Act No. 7/2007 of 12 April 2007. Title III, Chapter IV, articles 31 et seq. of this norm regulate "The right to bargain collectively, to representation and to institutional involvement. The right to freedom of assembly". It should be noted that this article establishes, as general principles, that "public servants have the right to bargain collectively, to representation and to institutional involvement in the establishment of their working conditions". Article 33 sets out the principles governing the right to bargain collectively: "Collective bargaining on the working conditions of

public servants, which shall respect the principles of legality, budgetary resources, a legally binding outcome, good faith in bargaining, openness and transparency, shall be conducted through the exercise of the union's representative power under article 6, paragraph 3(c) and article 7, paragraphs 1 and 2, of Organization Act No. 11/1985 of 2 August 1985 on freedom of association and under the provisions of this Chapter." The same Act establishes negotiating committees comprising the Administration and union representatives (the Public Administrations Negotiating Committee and the State Public Administration Negotiating Committee) as a means or instrument for bargaining collectively. Bargaining must be conducted with the union representatives who are currently authorized to participate in those committees (not with just any organization or with all existing Spanish unions, regardless of their representational capacity); at the time, this meant three signatories of the complaint: the UGT, the CC.OO. and the CSIF.

417. In this normative context, consideration should be given to the Government's convening, on 11 July 2012, of the Public Administrations Negotiating Committee and the State Public Administration Negotiating Committee in order to open negotiations on the measures contained in Royal Legislative Decree No. 20/2012.

- The Government convened the two negotiating committees established pursuant to the EBEP in order to conduct negotiations on the Royal Legislative Decree and, to that end, attempted to negotiate with the very unions that have complained to the ILO that no negotiations took place.

- The Government fulfilled its collective bargaining obligation in good faith since, although the draft legislation was subsequently submitted to the Congress of Deputies for confirmation in accordance with article 86 of Spain's Constitution, the Government drafted the Royal Legislative Decree on the understanding that it should not be adopted by the Council of Ministers without prior negotiation with the unions.

- The negotiating committees were convened on 9 July 2012 and the unions were instructed to hold their negotiations on 11 July 2012.

- The unions convened were those which were authorized to participate in the negotiations.

- The negotiations were to be conducted prior to the Congress of Deputies' consideration of the draft of the Royal Legislative Decree, which it was scheduled to do on 13 July 2012.

418. When the day of the meeting arrived, the representatives of the unions (the CC.OO., the UGT, the CSIF, Basque Workers' Solidarity (ELA) and the Galician Trade Union Confederation (CIG), met first with the Secretary of State for Public Administrations (who chairs the Committee on behalf of the Government) and then refused to attend the meetings of the Committees. The attached certified list of the participants shows that, despite the time pressure and the urgency arising from the particularly serious situation of the economy in Europe and in Spain, the Administration respected the right of the negotiating committee's members to be informed of, to discuss and to negotiate on the measures set out in Royal Legislative Decree No. 20/2012 and to make proposals thereon.

419. The list also makes it clear that the unions authorized to participate in these negotiating committees requested to meet first (as mentioned above) with the Secretary of State for Public Administrations, who granted their request. At the end of that previous meeting – at which the unions expressed their opposition to the measures that had been proposed by the Government and were to be discussed at the meetings of the negotiating committees – the very unions that submitted their complaint to the ILO, alleging that the Administration had

violated their right to bargain collectively, refused to participate in those meetings despite the urgings of the Secretary of State.

420. The press kit for those meetings is attached and various media reports show that it was the unions that (in media slang) "skipped out on" the meeting.

421. The Government therefore considers that its actions should be clearly understood as having respected the principles that govern collective bargaining since, according to the statement of reasons for the EBEP, "The State shall emphasize the principles of legality, budgetary resources, a legally binding outcome, good faith in bargaining, openness and transparency that should govern negotiations"; this is repeated in article 33, paragraph 1, of that Basic Statutes. Thus, the fact that the Administration acted in accordance with those Statutes shows that it also negotiated in good faith since each of the parties had the right to express its views, a right that the unions themselves decided not to exercise.

422. The Government maintains that it respected both the general framework of the right to bargain collectively and the specific elements of that right as it applies to public servants and that all the provisions on collective bargaining contained in Act No. 7/2007 of 12 April 2007 (the EBEP), particularly those relating to the principles of legality, budgetary resources, a legally binding outcome, good faith in bargaining, openness and transparency, were respected in so far as it allowed for the exercise of the unions' representative capacity by convening the Public Administration Negotiating Committees and inviting the most representative organizations to attend. The two negotiating committees were convened because some of the issues mentioned in article 37 of the EBEP (matters relating to working conditions and compensation and proposals on, among other things, union rights, working hours and holidays) were included in the Royal Legislative Decree.

423. The Government notes that the right to bargain collectively has not been drastically restricted. The provisions of Royal Legislative Decree No. 20/2012 that affect collective bargaining are fully consistent with the constitutional principles and with established jurisprudence on the matter (see above). In that connection, the Royal Legislative Decree amends article 32 of the EBEP, but using language that was already included in article 38 of the Statutes and had been in force since their adoption.

424. With respect to the suspension of pacts and agreements, articles 32 and 38 of Act No. 7/2007 of 12 April 2007 (the EBEP) specifically guarantee at the outset the implementation of pacts and agreements. Only in emergencies and for serious reasons of public interest, as a result of a significant change in the economic situation, may the Government's public administration bodies suspend or modify the implementation of pacts and agreements that have already been signed, where absolutely necessary in order to preserve the public interest. This entails:

- A full guarantee of compliance with the provisions of collective pacts, agreements and conventions.

- The introduction, as doctrine has shown, of a safety valve into the collective bargaining regime, similar to the Administration's *ius variandi* in public procurement, which cannot be interpreted broadly or undermine in practice the exercise of the right to bargain collectively. Therefore, it must be based on an abnormal – emergency – situation that makes it absolutely necessary to take certain actions in order to safeguard a protected legal asset, the public interest. In that regard, the measures envisaged in the Royal Legislative Decree are fully justified since they apply only during economic emergencies, which are contrary to the public interest and whose modification requires actions that are completely necessary in order to safeguard that interest.

425. The Government adds that, under these circumstances, which, as has been shown, are considered emergency and exceptional and which therefore justify the actions envisaged in articles 32 and 38 of the EBEP, the legislation establishes that the unions have a right to be informed: "in that event, the public administrations shall inform the unions of the reasons for the suspension or modification".

426. Concerning the allegation that the right to freedom of association, the resources and the time credits that unions are afforded in order to perform their functions, the Government states that the provisions affecting such time credits, contained in article 10 of Royal Legislative Decree No. 20/2012, merely corrected administrative excesses resulting from the implementation of pacts that went beyond the provisions of the Workers' Statute, the EBEP and the Freedom of Association Organization Act with no monitoring whatsoever.

427. According to the complainant organizations, the norm contained in article 10 of Royal Legislative Decree No. 20/2012 "constitutes unwarranted restriction of the corollary to freedom of association, the permanent, indefinite and ongoing right of unit or union representatives to time credits, established by public servants through collective bargaining, which significantly affects union activities and is therefore contrary to them". The Government states that the unions' statement is legally inadmissible and should be deemed to be neither fair nor accurate since:

– It is clear from the wording of article 10 of the Royal Legislative Decree that the regulations contained in other legal provisions are being applied; it is simply that excesses in that regard have been restricted:

> Article 10. Reduction of union leave
>
> 1. Within the framework of the public administrations and ancillary bodies, universities, foundations and societies, as from the entry into force of this Royal Legislative Decree, all union rights – whether referred to as such or by any other name – established in agreements on public servants or statutory personnel or in collective conventions and agreements on workers signed by their representatives or unions, the provisions of which go beyond those of Royal Legislative Decree No. 1/1995 of 24 March 1995 (adopting the revised Workers' Statute Act); Organization Act No. 11/1985 of 2 August 1985 (on freedom of association) and Act No. 7/2007 of 12 April 2007 (the Basic Statutes of the Public Service) concerning hours with pay that may be used for the conduct of union or representation functions, for the appointment of union delegates or as full-day waivers of attendance at the workplace, as well as other union rights, shall be brought fully into line with the provisions of these legislative acts.
>
> Therefore, any collective pacts, agreements and conventions on such matters that have been signed and that go beyond the aforementioned provisions shall be repealed and without effect as from the entry into force of this Royal Legislative Decree.

– In light of the exceptional nature of the current economic situation, one of the purposes of the Royal Legislative Decree is to "rationalize staffing costs". This goal entails a fully justified restriction of the express provisions of labour law concerning time off with pay for the conduct of union and representation activities in order to increase the number of working hours devoted to public service.

– This provision, which merely corrects previous excesses in the public administrations – which clearly went beyond the practice of Spain's private sector, undermining the Administration's functioning and even hindering collective bargaining within it – is fully in line with the Constitution.

The Government reports that the labour chamber of Spain's high court has already had occasion to issue a judgment on article 10 of the Royal Legislative Decree and that it declined to bring the issue of the article's constitutionality before the

Constitutional Court because there had been no violation of the collective bargaining rights established in the Constitution.

– It is clear from the wording of article 10 of the Royal Legislative Decree that it fully respects collective bargaining; it does not hinder but, in fact, expressly authorizes the negotiation of new agreements with unions.

428. Merely by approving the Royal Legislative Decree, the Government demonstrated its desire to encourage collective bargaining, contrary to the gratuitous and erroneous allegations in the complaint that the Royal Legislative Decree hinders it. In fact, not only has the Government encouraged such bargaining; it has signed specific agreements with the unions, of which the latter did not inform ILO in their complaint, even though such an agreement had already been signed on 29 October 2012, the date on which the complaint was submitted.

429. The fact is that the Spanish Government and the most representative unions firmly undertook to promote dialogue and collective bargaining committees within the framework of the public service. This commitment was made officially in an agreement dated October 2012 (see attached copy); its initial commitments include: (1) establishing the various negotiation and technical committees in Spain's State Administration in order to give new impetus to areas such as, among others, training, occupational hazard prevention, social responsibility and equality of opportunity; and (2) improving the structure of collective bargaining and the various related areas envisaged in the EBEP (rationalization of union resources and forums for participation and negotiation).

430. In fact, the second part of article 10, which enables the negotiation with union leaders of new agreements on time credits and other union rights, has already been implemented and, pursuant to this provision, the Administration and union leaders have signed an agreement on the scope of these rights in the State Administration. This is precisely the objective of the agreement on resource allocation and rationalization negotiation and participation structures that was reached in the State Administration Negotiating Committee on 29 October 2012, published as a decision of the State Secretariat for Public Administrations on 12 November 2012 (*Official Gazette*, 14 November 2012) and signed by the unions that submitted the present complaint to the ILO. In its statement of reasons, this agreement states that "furthermore, Act No. 7/2007 of 12 April 2007 (the EBEP), recognizing the principles contained in the Constitution of Spain, the Freedom of Association Organization Act and ILO Convention No. 151, which support the content of this agreement, recognize the unions as the sole legitimate partners with a view to exercise of the right of public servants to bargain collectively, to representation and to institutional involvement in the establishment of their working conditions."

431. In the same statement of reasons, the agreement recognizes the need to respect the unions' rights under the law, including by providing the resources that are essential to collective bargaining. Therefore, the agreement also provides the unions with the resources that they need so that they "can rationally fulfil their representation and negotiation functions".

432. Not only was this agreement signed by the unions empowered to do so; it was also ratified by the State Administration Negotiating Committee and the Single Agreement Negotiating Committee. It was signed by the CC.OO., the UGT, the CSIF, the USO and the CIG on the very same day that these unions submitted their complaint to the ILO Office in Spain, without informing the ILO that they were in full agreement with the Government's actions and that they had signed and ratified the agreement not in one negotiating committee, but in all of the negotiation forums available under the law with a view to the coordination of collective bargaining by public service employees in the State Administration: the Negotiating Committee on Issues Common to Public Servants and Contractual Workers,

the Negotiating Committee on Issues Specific to Public Servants and the Single Agreement Negotiating Committee (for contractual employees).

433. The Government states that it has fully met its obligations under the ILO Conventions and, after describing in detail the relevant legislation and jurisprudence, it maintains that the reform introduced by the Royal Legislative Decree is consistent with the decisions and principles of the ILO Freedom of Association Committee and, specifically, with paragraph 1038 on "budgetary powers and collective bargaining". In addition to noting that ILO Convention No. 151 on Labour Relations (Public Service) requires some flexibility in application, the paragraph expressly states:

> The Committee therefore takes full account of the serious financial and budgetary difficulties facing governments, particularly during periods of prolonged and widespread economic stagnation. However, it considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants; where the circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the employees who are the most affected. In other words, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the parties to bargaining, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other.

The Government also states that there is no violation of the principle of collective bargaining established in Convention No. 98 since Spanish law enshrines the right to bargain collectively in order to establish working conditions as an individual right to be exercised collectively by all public servants. Article 10 of Royal Legislative Decree No. 20/2012 is in itself an example of the promotion of this right; it entrusts the negotiating committees with the adoption of agreements on the rights of union representatives so that they can rationally fulfil their representation and negotiation functions and exercise their other union rights. Also, contrary to the unions' claims, Royal Legislative Decree No. 20/2012 permits the expansion of this legal regulation by allowing the adoption of agreements granting union rights within the framework of the negotiating committees. Furthermore, the Royal Legislative Decree does not affect the regulations governing the so-called extrajudicial dispute settlement procedures, which empower employers and employees in the public administration to agree to establish, define and implement such systems (EBEP, article 45).

434. The Government's actions should be deemed to be consistent with the principles that govern collective bargaining since, as has been shown, the EBEP, in its statement of reasons, states that "the Statutes establish the principles of legality, budgetary resources, a legally binding outcome, good faith in bargaining, openness and transparency that should govern negotiations"; this is repeated in article 33, paragraph 1, of the Statutes. Thus, since the fact that the Administration acted in accordance with the law shows that it negotiated in good faith and since each of the parties had an opportunity to express its views, the failure to reach agreement during the negotiations on Royal Legislative Decree No. 20/2012, owing to the unions' refusal to participate in the dialogue opened by the Administration, cannot be interpreted as a lack of negotiation, nor can it be said that only information was provided since the party that was informed had an opportunity to make a timely counter-proposal.

435. Lastly, the Spanish Government requests that the entire complaint be dismissed.

C. The Committee's conclusions

436. *The Committee notes that, in the present case, the complainant organizations allege: (1) that there were no consultations either on Royal Legislative Decree No. 3/2012 of 10 February 2012 on urgent measures for labour market reform, which was adopted by the*

Government, confirmed by the Congress of Deputies on 13 March 2012, transmitted as draft legislation and subsequently adopted as Act No. 3/2012 of 6 July 2012, and which made certain changes to the Royal Legislative Decree that it replaced; or on Royal Legislative Decree No. 20/2012 of 13 July 2012 on measures to ensure budgetary stability and promote competition, which was adopted by the Government and confirmed by the Congress of Deputies and which includes a series of measures designed to reorganize and rationalize the public administrations; and (2) that certain provisions of these legislative acts violate the conventions on freedom of association and collective bargaining in the public and private sectors that Spain has ratified, particularly, the provisions on collective bargaining and consultation.

437. *The Committee notes that the Government rejects these allegations, explaining that the legislation in question is a response to an unprecedented crisis and to a recession that began in 2008, as well as to accumulated macroeconomic imbalances that required forceful, urgent action in order to address the specific weaknesses of the labour market. More than 3.2 million jobs had been lost since the beginning of the crisis and the unemployment rate stood at 5,273,600 as at February 2012 with over 1.5 million families in which all of the members were unemployed; thus, Spain's unemployment rate was higher than that of the European Union. The Committee takes note of the Government's statement that the Royal Legislative Decrees adopted by the Government (Nos 3/2012 and 20/2012) included provisional legislation that was confirmed by the Congress of Deputies, after which it was no longer provisional; that they therefore do not constitute, de facto or de jure, a "unilateral decision of the Government"; and that the constitutional provisions on situations of urgent and extraordinary necessity were followed when drafting them.*

438. *The Government explains that Royal Legislative Decree 3/2012 of 10 February 2012 and Act No. 3/2012 of 6 July 2012 sought to give enterprises greater internal flexibility so that, during periods of change or difficulties, they could adapt to the new conditions in order to retain jobs rather than laying off employees as in the past (until now, with large numbers of employees employed on temporary contracts, enterprises have adjusted by laying off employees rather than modifying working conditions); the Government also highlights the high temporary employment and unemployment rates among young people. The Committee notes the Government's statement that the IMF and the OECD have welcomed the labour reform and that the Government's adoption of Royal Legislative Decree No. 20/2012 of 13 July 2012 was also a response to the urgency arising from a serious recession that had begun in 2008 and had created macroeconomic imbalances that were unsustainable for Spain, and to a serious lack of confidence on the part of the financial markets that had led to a severe tightening of the country's financing conditions. The Government states that its goal was to reduce the public deficit and take measures to contain public spending and implement the structural reforms agreed with the European Union, including the specific recommendations made by the European Council and the decisions of the ECOFIN, which gave Spain an extra year to correct its excessive deficit. The Committee takes note of the Government's statement that appeals against Royal Legislative Decree No. 20/2012 of 13 July 2012 (suspension of payment of the December 2012 bonus to public service staff) have been brought before the Constitutional Court and that appeals against Act No. 3/2012 of 6 July 2012 have also been lodged, as well as its suggestion that consideration of the case be deferred accordingly. In that regard, the Committee would like to point out that the complaint was submitted in May 2012 and that there is no way to know when the Constitutional Court will issue its judgment; moreover, these matters have been brought before the Committee of Experts on the Application of Conventions and Recommendations, which, before considering the case, decided to request the Committee to give its views. The Committee requests the Government to inform it of any Constitutional Court or Supreme Court ruling on the aforementioned pieces of legislation. Lastly, the Committee notes that its purpose in considering the present complaint is not to raise issues of constitutionality or legality under domestic law; it will merely formulate*

conclusions from the point of view of the principles of freedom of association and collective bargaining laid down in the relevant ILO Conventions, which, moreover, have been ratified by Spain.

Allegations concerning the lack of consultation

439. *The Committee notes that, according to the complainant organizations, Royal Legislative Decree No. 3/2012 of 10 February 2012 on urgent measures for labour market reform (including reforms that affect collective bargaining in the private sector) was adopted by the Government without any prior consultation on the substance and without holding consultations allowing for an exchange of views with the most representative unions, even though several days previously – on 25 January 2012 – those organizations, the CEOE and the CEPYME had signed an interprofessional agreement on employment and collective bargaining for the period 2012, 2013 and 2014, which, in response to the economic crisis, covered issues relating to the structure and coordination of collective bargaining, internal flexibility, negotiated non-application by enterprises of certain working conditions established in sectoral collective agreements, and wage reductions. According to the complainant organizations, Royal Legislative Decree No. 3/2012 is in direct contradiction to the basic elements of the aforementioned agreement, having disregarded and repealed them. Therefore, the unions, knowing that the Royal Legislative Decree would be referred for consideration as draft legislation, prepared draft amendments when it was submitted to the Congress of Deputies. The Committee also notes the allegations that Royal Legislative Decree No. 20/2012 of 13 July 2012 was adopted unilaterally by the Government without convening the State Negotiating Committees (as it was required to do by law), even though it provided for elimination of the December 2012 public sector bonus and imposed other major restrictions that entailed the suspension of provisions of collective agreements; the unions were informed two months later at a routine meeting, at which the Administration simply read out the provisions of the Royal Legislative Decree without replying to or addressing the issues raised by the unions.*

440. *The Committee takes note of the Government's statement that: (1) the consultations mentioned in the complaint need not culminate in acceptance of the demands of those consulted (the social partners' opposition to a collective bargaining reform had been known since 2011); (2) the II AENC, signed on 25 January 2012 – very close to the date on which Royal Legislative Decree No. 3/2012 was adopted – recognizes the exceptional circumstances that call for specific measures designed to ensure, as quickly as possible, economic growth leading to job creation; in other words, there was no time to lose and, in the Government's view, it was neither advisable nor possible to hold consultations on issues on which the social partners had already expressed their views in the past; (3) the Royal Legislative Decree did not repeal the II AENC since, while it differs from it in certain respects (deals with certain issues differently), it makes no mention of other aspects of collective bargaining or internal flexibility; thus, the II AENC as a whole remains applicable and the complainant's allegation that it has been suspended or repealed must be rejected; (4) as for the Royal Legislative Decrees, the law authorizes dispensing with procedures such as consultations for reasons of urgency and, in the case of Royal Legislative Decree No. 3/2012, there were reasons of extraordinary and urgent necessity during the crisis.*

441. *The Committee notes the Government's statement that consultations were held following the adoption of Royal Legislative Decree No. 3/2012 (specifically, five meetings in February and March 2012 (on 10, 20 and 23 February and 5 and 12 March 2012)) and that they were attended by representatives of two unions, the UGT and the CC.OO., which had an opportunity to express their views and make suggestions; the first four meetings were held before the Congress of Deputies adopted the consolidation agreement on Royal Legislative Decree No. 3/2012 and all five meetings were held before what would later*

become Act No. 3/2012 was referred to Parliament; during parliamentary consideration, 657 amendments were submitted to the Congress of Deputies and 574 to the Senate and, of these, 74 were accepted by the Congress of Deputies and 11 by the Senate. These amendments led to changes in a number of articles that are mentioned in the complaint. The Government stresses that the unions themselves prepared draft amendments which, since they resulted in the submission of amendments by parliamentary groups, were not ignored but were considered and studied.

442. *In light of the foregoing, the Committee notes that, during the drafting of Royal Legislative Decree No. 3/2012 and before its approval by the Council of Ministers, the most representative unions were not consulted regarding its wording or substance, although this was done subsequently. The Committee refers to the principles, set out below, on the importance of consultation but, with respect to this Royal Legislative Decree, which includes provisions on collective bargaining in the private sector and on the structure of such bargaining, it notes that the most representative employers' organizations and unions had signed an agreement on the bargaining structure shortly before and that, according to the Government, the Royal Legislative Decree in question differs in some respects from this agreement. The Government invokes in this respect reasons of extraordinary and urgent necessity in moments of crisis.*

443. *With regard to Royal Legislative Decree No. 20/2012, which had an impact on the public sector, the Committee takes note of the Government's statement that it convened the two State Negotiating Committees envisaged in the legislation on 9 July 2012 and summoned the unions to attend on 11 July 2012; these negotiations were to have been conducted before the Council of Ministers considered the draft of the Royal Legislative Decree, as they were scheduled to do on 13 July 2012. According to the Government, the unions asked to first meet with the Secretary of State for Public Administrations but, at the end of that meeting – at which they expressed their opposition to the measures proposed by the Government – the unions voluntarily refused to sit down at the negotiating table, as reported by the press.*

444. *The Committee notes from the above that, although the meeting of the Public Administrations Negotiating Committees and that of the State Administration Negotiating Committee, held in order to begin negotiations on the issues to be covered by Royal Legislative Decree No. 20/2012, were scheduled for 11 July 2012, the Government recognizes that the Council of Ministers had planned to begin consideration of the draft of the Royal Legislative Decree on 13 July 2012. The Committee considers that the time that the unions were given to study, discuss, negotiate and make proposals on the draft decree was clearly insufficient, particularly in view of its complexity and of the many important issues affecting the interests of workers and their organizations.*

445. *The Committee would like to stress the importance that it attaches to holding consultations with the most representative workers' and employers' organizations with sufficient advance notice and, in particular, to ensuring that the drafts of laws or Royal Legislative Decrees are submitted to these organizations for consultation well before their adoption by the Government as a prerequisite for consideration by Parliament. The Committee wishes to recall that, with the necessary limitations of time, the principles governing consultation remain valid during crises that require the taking of urgent measures, and to reiterate the conclusions that it formulated in its June 2013 meeting on a case involving Spain [see 368th Report, Case No. 2918 (Spain), para. 356]:*

> *The Committee draws attention to "the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved", as well as "the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests. The Committee highlights the*

importance of holding detailed consultations and making sure that the parties have sufficient time to prepare and express their points of view and discuss them in depth. The Committee also emphasizes that the process of consultation on legislation helps to give laws, programmes and measures adopted or applied by public authorities a firmer basis and helps ensure they are well respected and successfully applied; the Government should seek general consensus as much as possible, given that employers' and workers' organizations should be able to share in the responsibility of securing the well-being and prosperity of the community as a whole [see the ***Digest****, op. cit., paras 1067 and 1072].*

446. *The Committee expects that from now on the principles concerning consultation on legislation affecting the interests of trade unions and their members will be fully respected, and requests the Government to takes measures in this regard.*

Allegations concerning Royal Legislative Decree No. 3/2012 and (after consideration by the Congress of Deputies) Act No. 3/2012 of 6 July 2012

447. *The Committee will now consider the substantive issues raised by the complainant organizations. At the outset, they allege that Royal Legislative Decree No. 3/2012 disregarded and repealed most of the points that had been negotiated and agreed in the II AENC, which was negotiated by the most representative unions and employers' organizations. The complainant organizations point out that the Royal Legislative Decree establishes that: (1) enterprise collective bargaining agreements are given primacy of application over any sectoral agreement, so that it is not the negotiating parties who ensure coordination between different bargaining levels; furthermore, enterprise collective agreements (which are often concluded with non-union representatives) may be negotiated at any time during the period of validity of higher level agreements; and (2) enterprises can "disregard" – in other words, fail to implement – the provisions of a collective agreement on economic, technical, organizational or production-related grounds by imposing compulsory administrative arbitration by the National Advisory Committee on Collective Bargaining Agreements (a tripartite body) or an equivalent autonomous community body; and (3) internally negotiated flexibility in enterprise agreements has been replaced through a unilateral decision of the employer, who, without the consent of the workers, may decide not to apply working conditions agreed with the latter's representatives, including on such important matters as, among other things, wages and working hours.*

448. *The Committee notes that, according to the complainant organizations, Royal Legislative Decree No. 3/2012 extensively revised the legal regime governing "significant changes in working conditions" within the meaning of article 41 of the Workers' Statute by allowing employers to make unilateral changes in extremely important working conditions established in pacts or collective agreements concluded with the workers' representatives empowered to negotiate comprehensive agreements in the event that several consultation sessions fail to result in agreement. However, in the Spanish system of labour relations, problems in the functioning of an enterprise do not justify empowering employers to modify unilaterally the provisions of collective conventions and agreements, an effect that is disproportionate and incompatible with the effectiveness to be expected of collective bargaining. Empowering employers to modify at will the working conditions established in a collective agreement or pact, including matters as important as wages and working hours, even against the wishes of the workers' representatives is a violation of the guarantee of the effectiveness and binding force of collective agreements; in the complainants' view, it is a violation of the provisions of ILO Conventions Nos 98 and 154 and of the Collective Agreements Recommendation, 1951 (No. 91), which confirm and ensure that the parties are bound by the provisions of agreements reached through collective bargaining.*

449. *The Committee takes note of the Government's denial that giving enterprise agreements priority of application over higher level agreements (sectoral, State, autonomous community and higher level) as provided in Act No. 3/2012 (article 14, paragraph 2) constitutes a violation of the ILO Conventions on freedom of association because: (1) this priority extends only to certain matters; all others are still governed by the higher level agreement; (2) this priority on certain matters (including, among other things, wages and bonuses, overtime pay, working hours and distribution of working hours) was already established in previous legislation where the higher level agreement contains specific provisions on the bargaining structure or the concurrence of agreements; moreover, the previous legislation provides that a collective agreement adopted at a later date than a previous agreement may modify the rights set out in the former; (3) Act No. 3/2012 does not stipulate the level of negotiation; the latter is subject to the will of the parties, which may decide whether to negotiate an enterprise agreement or to apply a higher level agreement. However, if they choose the first of these options, the enterprise agreement will have priority of application on certain matters; (4) in the II AENC, which was also signed by two of the complainant organizations, the UGT and the CC.OO., the provisions on the scope of collective bargaining establish that sectoral agreements must encourage negotiations on working hours, functions and wages at the enterprise level, at the initiative of the affected parties, because this is the most appropriate level for dealing with such matters; and (5) the binding force of collective agreements is guaranteed under Spain's Constitution and the changes made by Act No. 3/2012 do not affect the right to bargain collectively, but they do change the bargaining structure and the relationship between agreements of differing scope. Concerning the complainants' allegation regarding the possibility, under the law, to negotiate enterprise agreements while higher level agreements are in force, the Committee notes that this has always been envisaged in Spanish labour law; Act No. 3/2012 merely preserves the possibility to negotiate enterprise agreements subsequent to higher level agreements; in addition, the new rule on the concurrence of collective agreements and the lawmakers' decision to give enterprise agreements priority of application on certain matters does not affect the right to bargain collectively at higher levels; in fact, between the date on which Royal Legislative Decree No. 3/2012 entered into force and November 2012, 28 State or supra-autonomous community sectoral collective agreements, nine autonomous community sectoral agreements and 177 provincial sectoral collective agreements were registered. With regard to the complainants' suggestion that the rules governing the concurrence of agreements should not be regulated by law, the Government mentions, in another part of its reply, that – contrary to the practice of other European countries – Spain's system of labour relations has opted for* erga omnes *application of higher level State collective agreements; thus, such agreements apply to all enterprises and workers, even where the enterprise did not negotiate the collective agreement and the employer is not a member of an employers' organization involved in the negotiations. The Committee notes that, with respect to the issues raised, the Government stresses that the rules governing concurrent collective agreements of differing scope follow a number of principles established by law (such as, among others, the principle of the most favourable standard, the principle of the derogable or non-derogable nature of rights, the principle of previous or subsequent norms and the* pro operario *principle); and that, in line with the lawmakers' preference, since 1994, for decentralized bargaining levels, Act No. 3/2012 calls for application of the norm closest to the situation and to the circumstances of the labour relations, the enterprise and the workers.*

450. *Concerning the allegation that, under Act No. 3/2012 (article 14, paragraph 1, and Additional Provision 5), employers can decide that, henceforth, they will not apply ("disregard") the provisions of a collective agreement on economic, technical, organizational or production-related grounds, without needing to reach agreement with the negotiators of the agreement, by imposing compulsory arbitration, the Committee takes note of the Government's statement that, under Spain's* erga omnes *collective bargaining*

system, contrary to the practice of other European countries, State collective agreements apply to all enterprises that fall within their scope, even those that were not members of the signatory employers' organizations, and that this makes it far more logical for a binding agreement to be "disregarded". The Committee also takes note of the Government's statement that the complainant organizations are objecting to the new procedure for such "disregard" (the grounds for which were already established under the law) and that, under Act No. 3/2012, the new procedure to be followed in the event of a dispute between the parties regarding disassociation from ("disregard for") certain provisions, is applicable only where the parties fail to reach agreement during the consultation periods envisaged in that Act or where they have not followed the collective bargaining dispute settlement procedures (on this point, the Government stresses that, according to the Workers' Statute, collective agreements must, at a minimum, establish "procedures for the effective settlement of disputes arising from the non-application of working conditions ..., using, where necessary, the procedures established for that purpose in State or autonomous community interprofessional agreements ..."); the Government therefore emphasizes that, in so far as a collective agreement includes effective dispute settlement procedures, the parties are required to follow these procedures and there is no need to bring proceedings before the new mechanism established in Act No. 3/2012, to be considered below.

451. *The Committee takes note of the Government's statement that, as a last resort (where the parties have failed to reach agreement during consultations or a collective agreement does not include a dispute settlement mechanism), Act No. 3/2012 provides for the intervention of the CCNCC, a tripartite collegiate body comprising representatives of the State Administration and the most representative unions and employers' organizations, which may settle the dispute itself or appoint an arbitrator, who shall be an impartial, independent expert (following the procedure agreed by the parties or, where they fail to agree, selected by the Advisory Committee). Where the parties to the dispute agree to the appointment of an arbiter, it is preferable for the appointment to be made by mutual agreement. Failing such agreement, a procedure is envisaged whereby each of the three groups of representatives proposes two arbiters and, through rounds of voting in an order to be established in advance, one arbiter at a time is eliminated until only one remains. The Committee notes that, in the Government's view, the system establishes sufficient mechanisms to ensure that the arbitration system is genuinely independent and allows the arbitrator to uphold the claim and reject in its entirety the request for permission not to apply the working conditions; to propose non-application of the working conditions, but to a lesser extent; or to prohibit non-application of the collective agreement. The Committee takes note of the Government's statement that, since the entry into force of Act No. 3/2012 on 31 October 2012, 477 agreements (between the negotiating parties) not to apply working conditions established in collective agreements have been registered with the authorities.*

452. *With regard to the alleged replacement of negotiated internal flexibility by a unilateral decision of the enterprise's management, which, following consultations in which no agreement with the workers is reached, may decide not to apply (by suspending or replacing) working conditions established in enterprise agreements, the Committee notes that this issue is addressed in articles 12 and 13 of Act No. 3/2012 and that, according to the Government: (1) the employer's decision may be appealed before the labour courts and that this provision is based on the 1994 legislative reform; and (2) with respect to such substantial modifications, Act No. 3/2012 provides for the establishment of specific collective bargaining procedures and for the holding of consultations with the workers' representatives on the reasons for the employer's decision, the possibility of preventing or reducing its impact and the measures needed in order to mitigate its effects on the workers concerned. During the consultations, the parties must negotiate in good faith in an effort to reach an agreement; they may also agree to replace the consultations by mediation or*

arbitration. The Committee notes the Government's statement that this legislation does not restrict the potential for negotiation in response to changes in collectively agreed working conditions and observes that, under article 12, paragraph 1, of Act No. 3/2012, the significant changes in working conditions mentioned in the previous paragraph may include the content of collective agreements or pacts.

Specific conclusions

453. *The Committee has considered the arguments of the complainants and the Government concerning Act No. 3/2012, and, although it has taken due note of the need to respond urgently to an extremely serious and complex economic crisis and to address the serious unemployment problem (the highest unemployment rate in the European Union), the Committee recalls the principle that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see the* ***Digest****, op. cit., para. 940]. The Committee stresses that articles 12, 13 and 16 of the Act authorize significant changes in working conditions (including, among other things, the length of the working day, working hours and shift work) not only on economic grounds (particularly in the event of current or anticipated losses or where the enterprise has seen a decline in revenue or sales for two consecutive quarters), but also on technical, organizational or production-related grounds without the need, as in the past, for the existence of an emergency or force majeure situation; under Act No. 3/2012, which applies not only during temporary periods of economic crisis but in perpetuity, where a disagreement arises during consultations and related bargaining, any of the parties may refer the dispute for arbitration. The Committee underlines that the elaboration of procedures systemically favouring decentralized bargaining of exclusionary provisions that are less favourable than the provisions at a higher level can lead to an overall destabilization of the collective bargaining machinery and of workers' and employers' organizations and constitutes in this regards a weakening of freedom of association and collective bargaining contrary to the principles of Conventions Nos 87 and 98 [see 365th Report, Case No. 2820 (Greece), para. 997]. In the Committee's view, the question of whether serious economic problems of enterprises may, in certain cases, call for the modification of collective agreements must be addressed, and, since it can be handled in various ways, the way to proceed should be determined within the framework of social dialogue.*

454. *The Committee further notes that article 14, paragraph 2, of Act No. 3/2012 introduces new rules for private sector collective bargaining and the structure thereof, including by giving enterprise collective agreements priority of application over higher level collective agreements on certain matters, which, as the Government points out, were not covered by the previous legislation. The Committee also notes that the complainant unions and other complainant organizations have clearly expressed their opposition to this new legislation and recalls its position that the determination of the bargaining level is essentially a matter to be left to the discretion of the parties.*

455. *Under these circumstances, the Committee stresses the importance of ensuring that the essential rules governing the system of labour relations and collective bargaining are shared, to the maximum extent possible, by the most representative workers' and employers' organization. It therefore invites the Government to promote a tripartite dialogue on Act No. 3/2012 in order to achieve this goal from the perspective of the principles established in the ILO Conventions on collective bargaining that Spain has ratified.*

Allegations concerning Royal Legislative Decree No. 20/2012 and (after consideration by the Congress of Deputies) Act No. 20/2012 of 13 July 2012

456. *The Committee notes the complainant organizations' allegation that Royal Legislative Decree No. 20/2012 of 13 July 2012 provides for a reduction in the wages of public administration employees by eliminating the December 2012 bonus, and for a reorganization of working time by, among other things, reducing the length of the annual paid holiday and the number of personal days, reducing other forms of leave beyond the legal minimum (the Royal Legislative Decree authorizes the negotiation of agreements on this matter in the Public Administration Negotiating Committees; according to the complainants, this is a permanent structural change) and reducing trade union leave.*

457. *According to the complainants, the foregoing measures have resulted in the unilateral suspension or repeal of the clauses of all public sector agreements on these matters, which it will no longer be possible to improve, and this was done without holding consultations with the unions as required by law (the complainant organizations recognize, however, that, under the previous legislation, collective agreements could be suspended or modified in exceptional cases on the grounds of "significant changes in the economic situation", in which case "the administrations shall inform the unions of the reasons for the suspension or modification"). Furthermore, according to the complainant organizations, Royal Legislative Decree No. 20/2012, in its Additional Provision 2, provides that, in the event of serious threats to the public interest resulting from a significant change in the economic situation, the public administrations must adopt adjustment, rebalancing of public accounts or economic or financial measures or plans in order to ensure budgetary stability (as the European Union requires) or reduce the public deficit; in such cases, the unions must be informed but the Administration is not required to hold consultations before disassociating itself from the clauses of agreements.*

458. *The Committee takes note of the Government's statements regarding the economic crisis (see above) and of its position that, in light of the economic situation and the need to reduce the public deficit, it was forced to adopt the structural reforms and additional measures to reduce public spending contained in Royal Legislative Decree No. 20/2012 of 13 June 2012, which – as the Government stresses – were adopted within the framework of Spain's commitments to the European Union (recommendation of the European Council giving Spain an extra year to correct its excessive deficit, adopted by ECOFIN on 10 July 2012) and of the National Reform Programme in order to rationalize the public administrations with a view to reducing staffing costs and increasing the quality and productivity of public servants. The Committee takes note of the Government's statement that the constitutionality of the Royal Legislative Decree's provisions on (union) leave, holidays and non-payment of the December 2012 bonus has been challenged before the Constitutional Court. The Government considers that the Royal Legislative Decree does not violate ILO Conventions owing to the existence of an urgent and extraordinary need which, under the Constitution, authorized the issuance of provisional legislation that was submitted to the Congress of Deputies immediately for discussion and voting, after which it was no longer provisional (Royal Legislative Decree No. 20/2012 was consolidated on 19 July 2012); thus, contrary to the complainant's claims, it does not constitute, de facto or de jure, a "unilateral decision of the Government".*

459. *The Committee also takes note of the Government's statement that the provisions of Royal Legislative Decree No. 20/2012 are fully consistent with the constitutional principles and with the jurisprudence on collective bargaining and are fully justified by an extraordinary and exceptional economic situation that poses a threat to the public interest, taking into account the obligation of the public administrations to inform the unions of grounds for an*

inspection or modification. It adds that both the legislation and the courts have established the primacy of law over collective agreements.

460. *With respect to the provisions of Royal Legislative Decree No. 20/2012 and Act No. 20/2012 on time credits granted to unions (trade union leave) which repeal the collective agreements on these matters, the Committee takes note of the Government's statement that: (1) the Royal Legislative Decree merely corrected administrative excesses resulting from the implementation of pacts that went beyond the provisions of the Workers' Statute, the EBEP and the Freedom of Association Organization Act with no monitoring whatsoever; (2) these provisions concern time off with pay for the conduct of union activities and full-day waivers of attendance at the workplace and must be brought into line with the aforementioned legislative acts; (3) collective agreements that go beyond these provisions are repealed; (4) the goal is to rationalize staffing costs; and (5) the Royal Legislative Decree does not hinder the negotiation of new agreements on these matters with unions; it expressly states that they may be negotiated only within the general negotiating committees, thereby encouraging collective bargaining.*

461. *The Committee also notes the Government's statement that on 25 October 2012, it signed an agreement with the most representative unions, in which it undertook to: (1) convene the State Administration's various negotiation and technical committees in order to give new momentum to, among other things, training, prevention of occupational hazards, social responsibility and equality of opportunity; and (2) move forward within the framework of collective bargaining and in the various areas envisaged in the legislation while rationalizing the participation and negotiation structures. Furthermore, on 25 October 2012, the Government and the most representative unions (including the complainant unions) signed an agreement giving the unions the necessary resources to rationalize their representation and negotiation functions by determining the number of credit hours granted to union leaders. The Committee welcomes the agreements to which the Government refers but notes that they cover only some of the issues raised in the complaint. The Committee stresses the importance of ensuring that the negotiating committees address all issues raised in the complaint in relation to the public administrations.*

Specific conclusions

462. *Having considered the arguments of the complainants and the Government concerning Act No. 20/2012, and while taking due note of the need to respond urgently to an extremely serious and complex economic crisis and to address the serious unemployment problem (the highest in the European Union), the Committee notes with concern that Royal Legislative Decree No. 20/2012, which was challenged by the complainants, directly suspended the collective agreements contrary to it or repealed their provisions in the following areas: the Christmas bonus, holidays, benefits for temporary inability to work and public sector union leave and time credits (the Government reports that the provisions on union leave were renegotiated through an agreement). The Committee also notes that Act No. 20/2012 reiterates the provisions of previous legislation, which authorized the suspension or modification of collective agreements in the event of a "significant" change in the economic situation.*

463. *The Committee stresses that all of the above gives rise to problems with respect to the principles of freedom of association and collective bargaining laid down in the relevant ILO Conventions. The Committee must therefore recall the principle that "State bodies should refrain from intervening to alter the content of freely concluded collective agreements" and that "[collective] agreements should be binding on the parties" [see* ***Digest****, op. cit., paras 939 and 1001].*

464. *The Committee recalls that, in an earlier case, it underlined that:*

> *The suspension or derogation by decree – without the agreement of the parties – of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98. If a government wishes the clauses of a collective agreement to be brought into line with the economic policy of the country, it should attempt to persuade the parties to take account voluntarily of such considerations, without imposing on them the renegotiation of the collective agreements in force. [See* ***Digest****, op. cit., paras 1000, 1005 and 1008.] While it is not its role to express a view on the soundness of the economic arguments invoked to justify government intervention to restrict collective bargaining, the Committee must recall that measures that might be taken to confront exceptional circumstances ought to be temporary in nature having regard to the severe negative consequences on workers' terms and conditions of employment and their particular impact on vulnerable workers. The Committee asks the Government to provide full information on the evolving impact of these measures on the overall environment and to keep it informed of the efforts made for their duration to be temporary. [See 365th Report, Case No. 2820 (Greece), para. 995.]*

The Committee therefore invites the Government to encourage social dialogue on these issues with a view to finding, to the fullest possible extent, solutions agreed with the organizations.

The Committee's recommendations

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

(a) The Committee draws the Government's attention to the principles concerning consultation of the most representative workers' and employers' organizations with sufficient advance notice of draft laws and draft Royal Legislative Decrees prior to their adoption by the Government, and hopes that these principles will be fully respected in the future.

(b) With regard to the new provisions contained in Acts Nos 3/2012 and 20/2012, the Committee stresses the importance of ensuring that the essential rules governing the system of labour relations and collective bargaining are agreed, to the maximum extent possible, with the most representative workers' and employers' organizations. It therefore invites the Government to promote a tripartite dialogue in order to achieve this goal from the perspective of the principles of freedom of association and collective bargaining laid down in the relevant ILO Conventions.

(c) The Committee requests the Government to transmit to it the Constitutional Court and Supreme Court rulings on Acts Nos 3/2012 and 20/2012.

Appendix I

Act No. 3/2012 of 6 July on urgent measures for labour market reform [excerpts]

Article 12. Significant changes in working conditions

I. Article 41 of the revised Workers' Statute Act, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, states:

"Article 41. Significant changes in working conditions

1. An enterprise's management may make significant changes in the working conditions on economic, technical organizational or production-related grounds. These shall be defined as those related to competition, productivity or the technical or work-related organization of the enterprise.

Significant changes in working conditions shall be defined as, among other things, changes with an impact on the following:

(a) Length of the working day.

(b) Working hours and distribution of working time.

(c) Shift work regime.

(d) System of remuneration and wage rates.

(e) Working arrangements and performance.

(f) Functions, where these exceed the functional mobility limits established in article 39 of this Act.

2. Significant changes in working conditions may have an impact on the rights granted to workers in an employment contract or in collective agreements or pacts or enjoyed by them collectively under a unilateral decision of the employer.

Changes that are "collective" are those that, within a 90-day period, affect at least:

(a) Ten workers in enterprises that employ fewer than 100 workers;

(b) Ten per cent of the workers in enterprises that employ 100 to 300 workers;

(c) Thirty workers in enterprises that employ more than 300 workers.

Changes that are "individual" are those that, within the established reference period, do not meet the threshold for collective changes.

3. The employer shall inform the affected workers and their legal representatives of a decision to make significant changes in individual working conditions at least 15 days before the date on which they will takes effect.

In the situations envisaged in article 1, paragraphs (a) through (d) and paragraph (f)(1) above, workers who are harmed by a significant change shall be entitled to terminate their contracts and receive the equivalent of 20 days' wages per year of service; where the worker has been employed for less than one year, compensation shall be prorated up to a maximum of nine months.

Without prejudice to the enforceability of the changes within the aforementioned period of validity, workers who have not chosen to terminate their contracts and who object to their employers' decisions may appeal them before the labour courts, which shall determine whether the change is justified and, if it is not, recognize the workers' entitlement to reinstatement under the previous conditions.

Where, in order to evade the provisions of the following paragraph of that article, the employer makes significant changes in the working conditions for successive 90-day periods in a number that falls below the threshold established in paragraph 2 of the article and in the absence of new developments that justify such actions, these additional changes shall be deemed to have been made fraudulently and shall be declared null and void.

4. Without prejudice to any specific procedures that may be established through collective bargaining, a decision to make significant collective changes in working conditions must be preceded, in enterprises in which the workers have legal representatives, by a maximum of 15 days of consultations with those representatives, focusing on the reasons for the employer's decision, the possibility of preventing or reducing its impact and the measures needed in order to mitigate its effects on the workers concerned.

Local trade unions may, if they wish, participate in consultations with enterprise management, provided that the majority of the members of the enterprise committee or of the staff representatives consent.

During the consultations, the parties shall negotiate in good faith in an effort to reach agreement. Such agreement shall require the consent of the majority of the members of the enterprise committee or committees, of the staff representatives, where applicable, or of the union representatives, where present, who, taken together, represent the majority of the employees.

In enterprises where the employees have no legal representatives, they may elect to be represented, for the purposes of negotiating the agreement, by a committee with no more than three members comprising employees of the same enterprise and elected by them democratically, or by a committee with the same number of members, to be selected in proportionate numbers by the most representative unions from the sector into which the enterprise falls and appointed to membership in the negotiating committee on the applicable collective agreement.

In any event, the appointment shall be made within five days as from the beginning of the consultations, which shall not be frozen by the failure to make such an appointment. The committee's agreements shall require the approval of the majority of its members. Where bargaining is conducted by a committee whose members are appointed by the unions, employers may elect to be represented by the employers' organizations of which they are members or, in the case of the autonomous communities, by the most representative such organizations, regardless of whether the organization is intersectoral or sectoral in nature.

The employer and the workers' representatives may agree at any time to replace the consultations by the mediation or arbitration procedure applicable to the enterprise, in which case the mediation or arbitration must be conducted within the maximum period allowed under that procedure.

Where the consultations result in an agreement, it shall be assumed that the criteria set out in article 1 have been met and the agreement can only be appealed before the competent court on grounds of fraud, deception, coercion or abuse of power in its conclusion, without prejudice to the right of the affected workers to exercise the option set out in paragraph 3 of this article.

5. Where consultations have ended without agreement being reached, the employer shall notify the workers of its decision to modify their collective working conditions, which shall take effect within seven days of the date of such notification.

An industrial action may be initiated in respect of the decisions mentioned in this paragraph, without prejudice to the individual action envisaged in paragraph 3 of this article. Individual actions may not be pursued until the industrial action has been settled.

6. Changes in working conditions established in collective agreements governed by Title III of this Act shall be made in accordance with the provisions of article 82, paragraph 3.

7. Transfers shall be subject to the specific provisions contained in article 40 of this Act."

II. Article 50, paragraph 1(a), of the revised Workers' Statute Act, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, states:

"(a) Significant changes in working conditions which violate the provisions of article 41 of this Act and undermine the dignity of the workers."

Article 13. Suspension of a contract or reduction in the length of the working day on economic, technical, organizational or production-related grounds or for reasons of force majeure

Article 47 of the revised Workers' Statute Act, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, states:

"Article 47. Suspension of a contract or reduction in length of the working day on economic, technical organizational or production-related grounds or for reasons of force majeure

1. The employer may suspend the employment contract on economic, technical, organizational or production-related grounds.

Economic grounds shall be deemed to exist where a negative economic situation is reflected in the enterprise's performance, for example through current or anticipated losses or a persistent decline in revenue or sales. In any event, the decline is considered to be persistent if, for two consecutive quarters, the revenue or sales for each quarter is less than for the same quarter of the previous year.

Technical grounds shall be deemed to exist where there are changes in, among other things, production techniques or equipment; organizational grounds where there are changes in, among other things, the workers' systems and working methods or in the organization of production; and production-related grounds where there are changes in, among other things, the demand for the enterprise's products or services.

The procedure, which shall apply regardless of the number of workers in the enterprise or the number of workers affected by the suspension, shall begin with notification of the competent labour authority and the simultaneous start of up to two weeks of consultations with the legal representatives of the workers.

The labour authority shall transmit the enterprise's notification to the unemployment benefits office and shall receive from the Labour and Social Security Inspectorate a mandatory report summarizing the notification and the points raised during the consultations. The report shall be issued within 15 days of the date on which the labour authority is notified that the consultations have ended and shall be included in the proceedings.

In the absence of the legal representatives of the enterprise's workers, the workers may be represented by a committee, to be appointed in accordance with the provisions of article 41, paragraph 4.

Where the consultations result in an agreement, it shall be assumed that the criteria set out in article 1 have been met and the agreement can only be appealed before the competent court on grounds of fraud, deception, coercion or abuse of power in its conclusion.

The employer and the workers' representatives may agree at any time to replace the consultations by the mediation or arbitration procedure applicable to the enterprise, in which case the mediation or arbitration

When the consultations have ended, the employer shall notify the workers and the labour authority of its decision regarding the suspension. The labour authority shall notify the unemployment benefits office of the employer's decision to suspend contracts, which shall take effect on that date unless a later date is stipulated in the decision.

The employer's decision may be challenged by the labour authority, at the request of the unemployment benefits office, where it is suspected that the intent is to allow the affected workers to obtain benefits unlawfully because there is no justification for the legal status of unemployment.

Workers may appeal the decisions mentioned in this paragraph before the labour courts, which shall declare the measure justified or unjustified. In the latter case, the court shall order the immediate reinstatement of the employment contract and shall sentence the employer to pay the wages that the workers had not received up to the date on which their contracts are reinstated or, where applicable, to pay the difference between those wages and the unemployment benefit received during the suspension period, without prejudice to the employer's obligation to reimburse the amount of those benefits to the unemployment benefits office. Where the number of workers affected by the employer's decision is equal to or greater than the threshold established in article 51, paragraph 1, of this Act, an

industrial action may be initiated, without prejudice to any individual action. Individual actions may not be pursued until the industrial action has been settled.

2. The length of the working day may be reduced on economic, technical, organizational or production-related grounds following the procedure envisaged in the article 1. For that purpose, "reduction of the working day" means reduction of the length of the working day by 10 to 70 per cent, computed on a daily, weekly, monthly or annual basis. During the period of reduced working days, no overtime may be worked except for reasons of force majeure.

3. In addition, employment contracts may be suspended for reasons of force majeure by following the procedure established in article 51, paragraph 7, of this Act and its implementing regulations.

4. During periods of contract suspension or reduction in the length of the working day, training activities related to the occupation of the affected workers shall be promoted in order to increase their versatility and employability."

Article 14. Collective bargaining

One. Article 82, paragraph 3, of the revised Workers' Statute Act, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, states:

"3. Collective agreements regulated by this Act shall be binding on all employers and workers included in their scope of application for as long as they are in force.

Without prejudice to the foregoing, where there are economic, technical, organizational or production-related grounds, by agreement between the employer and the workers' representatives authorized to negotiate comprehensive agreements in accordance with article 87, paragraph 1, and after holding consultations pursuant to article 41, paragraph 4, the enterprise may cease to apply the working conditions established in the applicable collective agreement, whether sectoral or enterprise, in so far as they affect the following:

(a) Length of the working day.

(b) Working hours and distribution of working time.

(c) Shift work regime.

(d) System of remuneration and wage rates.

(e) Working arrangements and performance.

(f) Functions, where these exceed the functional mobility limits established in article 39 of this Act.

(g) Voluntary improvement of social security benefits.

Economic grounds shall be deemed to exist where a negative economic situation is reflected in the enterprise's performance, for example through current or anticipated losses or a persistent decline in revenue or sales. In any event, the decline is considered to be persistent if, for two consecutive quarters, the revenue or sales for each quarter is less than for the same quarter of the previous year.

Technical grounds shall be deemed to exist where there are changes in, among other things, production techniques or equipment; organizational grounds where there are changes in, among other things, the workers' systems and working methods or in the organization of production; and production-related grounds where there are changes in, among other things, the demand for the enterprise's products or services.

In the absence of the legal representatives of the enterprise's workers, the workers may be represented by a committee, to be appointed in accordance with the provisions of article 41, paragraph 4.

Where the consultations result in an agreement, it shall be assumed that the criteria set out in paragraph 2 have been met and the agreement can only be appealed before the competent court on grounds of fraud, deception, coercion or abuse of power in its conclusion. The agreement shall clearly establish the enterprise's new working conditions and their duration, which shall not extend beyond the time at which the next enterprise agreement becomes applicable. Agreement not to apply working conditions shall not result in failure to meet the obligations established in a convention on the elimination of gender discrimination or, where applicable, in the applicable equality plan. Furthermore, the joint committee on the collective agreement must be notified of the non-application agreement.

Where a disagreement arises during the consultations, any of the parties may refer the dispute to the committee on the agreement, which shall issue a decision within seven days of the date on which it was seized of the dispute. Where the committee's intervention has not been requested or where it has failed to reach agreement, the parties shall follow the procedures set out in State or autonomous community interprofessional agreements, pursuant to article 83 of this Act, with a view to the effective resolution of disputes arising during negotiation of the agreements mentioned in this paragraph, including prior commitments to submit disputes to binding arbitration. In the latter case, the arbitral award shall have the same force as agreements reached during consultations and may be appealed following the procedure and on the grounds established in article 91.

Where the consultations end without agreement being reached and the procedures mentioned in the previous paragraph are not applicable or have failed to resolve the dispute, any of the parties may refer the dispute to the National Advisory Committee on Collective Bargaining Agreements if non-application of the working conditions affects either branches of the enterprise located in more than one autonomous community or the relevant bodies of such autonomous communities. The decisions of these bodies, which may be adopted internally or by an arbitrator whom they appoint for that purpose with the necessary guarantees to ensure the latter's impartiality, must issue a ruling within 25 days of the date on which the dispute was referred to the bodies in question. Such a decision shall have the same force as agreements reached during consultations and may only be appealed following the procedure and on the grounds set out in article 91.

Where the proceedings mentioned in the preceding paragraphs conclude with a ruling that the working conditions shall not be applied, the outcome must be reported to the labour authority for the sole purpose of deposit."

II. Article 84, paragraph 1, of the revised Workers' Statute Act, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, states:

"1. Unless otherwise agreed in a pact negotiated in accordance with article 83, paragraph 2, or as stipulated in the following paragraph, a collective agreement, while in force, shall not be affected by the provisions of agreements of differing scope."

III. Article 84, paragraph 2, of the revised Workers' Statute Act, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, states:

"2. Regulation of the conditions established in an enterprise agreement, which may be negotiated at any time during the period of validity of higher level collective agreements, shall be given priority of application over State, autonomous community or lower-level sectoral agreements on the following matters:

(a) The amount of the basic wage and wage supplements, including those associated with the status and performance of the enterprise;

(b) Bonuses, overtime pay and specific compensation for shift work;

(c) Working hours and the distribution of working time, the shift work schedule and annual holiday planning;

(d) Adaptation of the job classification system to the circumstances of the enterprise;

(e) Adaptation of the aspects of hiring procedures that fall within the scope of enterprise agreements under this Act;

(f) Measures designed to promote a balance between work, the family and social life;

(g) Other measures established in the collective agreements and conventions mentioned in article 83, paragraph 2.

On such matters, the collective conventions of groups of enterprises or of enterprises that are part of the same organization or production system and are identified as such, mentioned in article 81, paragraph 1, shall have the same priority of application.

The collective agreements and conventions mentioned in article 83, paragraph 2, shall not be given the priority of application envisaged in this paragraph."

IV. Article 85, paragraph 3, of the revised Workers' Statute Act, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, states:

"3. Without prejudice to the freedom to make contractual arrangements mentioned in the preceding paragraph, collective agreements must include, at a minimum, the following:

(a) Identification of the contracting parties.

(b) Personal, functional, territorial and temporal scope.

(c) Procedures for the effective settlement of disputes arising from non-application of the working conditions mentioned in article 82, paragraph 3 using, where necessary, the procedures established for that purpose in State or autonomous community interprofessional agreements pursuant to the relevant articles thereof.

(d) The terms and conditions for terminating the agreement and the minimum period for terminating it prior to its entry into force.

(e) Appointment of a joint committee to represent the negotiating parties in considering the issues raised by the law and such other issues as may be assigned to it; establishment of the procedures and time limits for the committee's activities, including referral of disputes arising from its work to the non-judicial conflict resolution mechanisms established through the State or autonomous community interprofessional agreements envisaged in article 83."

…

Additional Provision 5. National Advisory Committee on Collective Bargaining Agreements

Final Provision 2 of the revised Workers' Statute Act, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, states:

"Final Provision 2. National Advisory Committee on Collective Bargaining Agreements

1. The National Advisory Committee on Collective Bargaining Agreements, as a joint, tripartite collegiate body attached to the Ministry of Employment and Social Security and comprising representatives of the State Administration and the most representative unions and employers' organizations, shall have the following functions:

(a) To provide advisory and consultative services with respect to the implementation of collective agreements and enterprise agreements and to advise in the event of extension of a collective agreement regulated by article 92 of this Act.

(b) To conduct research, provide information and prepare documentation on collective bargaining and disseminate the foregoing through the Collective Bargaining Observatory.

(c) To intervene in dispute settlement proceedings in the event of a disagreement arising during consultations on non-application of the working conditions established in collective agreements pursuant to article 82, paragraph 3, of this Act.

2. The composition, organization and working procedures of the National Advisory Committee on Collective Bargaining Agreements and mechanisms for supporting the work of the Directorate-General for Employment in the Ministry of Employment and Social Security shall be established through regulations.

3. The functioning and decisions of the National Advisory Committee on Collective Bargaining Agreements shall always be understood to be without prejudice to the competencies of the courts and the labour authority under the law."

Additional Provision 6. Measures of support for the National Advisory Committee on Collective Bargaining Agreements

The National Advisory Committee on Collective Bargaining Agreements, which is attached to the Directorate-General for Employment in the Ministry of Employment and Social Security through the Directorate-General for Employment, shall receive additional support from the aforementioned Directorate-General in order to carry out the tasks assigned to it under this Act, without prejudice to the provisions of the regulatory standards, following consultation with the most representative unions and employers' organizations.

Appendix II

Act No. 20/2012 of 13 July [excerpts]

Article 2. Payment of the December 2012 bonus for public sector employees

1. In 2012, the December remuneration of public sector employees within the meaning of article 22, paragraph 1, of Act No. 2/2012 of 29 June 2012 on the general State budget shall be reduced owing to elimination of the bonus and of specific supplements or equivalent additional payments for that month.

2. In implementation of the preceding paragraph, the following measures shall be taken:

2.1. In December, public servants shall not receive the sums mentioned in article 22, paragraph 5 (2), of Act No. 2/2012 of 29 June 2012 on the general State budget for 2012 as wages and bonuses.

Neither shall they receive other payments, including bonuses and specific supplements or additional wages for the month of December. In this case, each competent administration may allow the reduction to be prorated over the remaining payroll payments for the current year as from the entry into force of this Royal Legislative Decree.

2.2. Employees shall not be paid the Christmas or equivalent bonus for December 2012. This reduction shall apply to all forms of remuneration included in this payment under the applicable collective agreements.

This measure shall be directly applicable to the payroll payment for December 2012. However, the final distribution of the reduction in the relevant areas may be modified through collective bargaining; in such cases, it may be agreed that the reduction will be prorated over the remaining payroll payments for the current year as from the entry into force of this Royal Legislative Decree.

The reduction in remuneration established in paragraph 1 of this article shall also apply to senior management, contractual workers and employees who are not covered by a collective agreement but are not considered to be senior management.

3. The reduction in remuneration mentioned in the preceding paragraphs shall also apply to employees of public sector foundations and consortiums made up primarily of public sector administrations; to employees of the Bank of Spain; and to the senior

management and other employees of Social Security mutual funds for accidents at work and occupational illnesses and their common entities and centres.

4. The savings realized from elimination of the bonus, specific supplements and additional payments pursuant to this article shall be used in subsequent years to make contributions to pension plans or group insurance policies that include retirement benefits, subject to the provisions of Organization Act No. 2/2012 on budgetary stability and financial sustainability, on the terms and with the scope established in the relevant finance acts.

5. Where the system of remuneration does not expressly provide for the payment of bonuses or where it provides for the payment of more than two bonuses per year, the total annual remuneration shall be reduced by one fourteenth, exclusive of performance incentives. This reduction shall be prorated over the remaining payroll payments for the current year as from the entry into force of this Royal Legislative Decree.

6. The provisions of the preceding paragraphs shall not apply to public servants whose daily wage exclusive of performance incentives, when computed over a year, is less than 1.5 times the guaranteed minimum wage established in Royal Decree No. 1888/2011 of 30 December 2011.

7. This article is foundational in nature as it is based on articles 149, paragraph 1(13) and article 156, paragraph 1, of the Constitution.

Article 3. Payment of bonuses and supplements or equivalent additional payments to State public sector employees in December 2012

1. In accordance with article 2 of this Royal Legislative Decree, the public servants, statutory personnel and members of the judiciary and the legal profession covered by articles 26, 28, 29 and 30; article 31, paragraphs 1 and 2; and articles 32 and 35 of Act No. 2/2012 of 29 June 2012 on the general State budget for 2012 shall not receive any bonus, specific supplement or, where applicable, supplement or equivalent additional payment for December 2012.

2. Article 2, paragraph 2, of this Royal Legislative Decree shall apply to State public sector employees covered by article 27 of Act No. 2/2012.

3. In the case of the employees covered by article 31, paragraph 3, of Act No. 2/2012, article 2 of this Royal Legislative Decree shall be applied in accordance with the provisions of the Judiciary Organization Act on wages and bonuses; their wages and bonuses shall be decreased by one fourteenth, prorated over the wages and supplements that they have yet to receive for the current year as from the entry into force of this Royal Legislative Decree.

Furthermore, they shall not receive, in December, the payments established in Annex XI to Act No. 39/2010 of 22 December 2010 on the general State budget for 2011 and in paragraph 2 of the Council of Ministers Agreement of 8 May 2009, published as Office of the Prime Minister Order No. 1230/2009 of 18 May 2009.

The reductions envisaged in this article shall apply to employees covered by article 31, paragraph 4, in accordance with the applicable regulations.

4. In accordance with article 2 of this Royal Legislative Decree, the total annual remuneration of the members of the judiciary and the public prosecution service mentioned in article 31, paragraph 5, of Act No. 2/2012, including the payment for December envisaged in annex X to Act No. 39/2010 of 22 December 2010 on the general State budget for 2011, shall be reduced by one fourteenth of the amount mentioned in the aforementioned article 31.

5. This reduction shall be prorated over the remaining payroll payments for the current year as from the entry into force of this Royal Legislative Decree.

6. The provisions of the preceding paragraphs shall not apply to public servants whose daily wage exclusive of performance incentives, when computed over a year, is less than 1.5 times the guaranteed minimum wage established in Royal Decree No. 1888/2011 of 30 December 2011.

…

Article 6. Application of article 31 of the Workers' Statute, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, to public sector employees

In 2012, public sector employees shall not be paid the Christmas bonus established in article 31 of the Workers' Statute, adopted through Royal Legislative Decree No. 1/1995 of 24 March 1995, without prejudice to the provisions of article 2, paragraph 2, of that Royal Legislative Decree.

Article 7. Amendment of article 32 of Act No. 7/2007 of April 2007, the **Basic Statutes of the Public Service**

The following second paragraph shall be added to article 32 of Act No. 7/2007 of 12 April 2007, the **Basic Statutes of the Public Service:**

"Article 32. Collective bargaining, representation and participation by employees

…

2. The implementation of collective conventions and agreements affecting employees shall be guaranteed except where, exceptionally and for serious reasons of public interest arising from a significant change in economic circumstances, the Government organs of the public administrations suspend or modify the implementation of previously signed collective conventions or agreements in so far as strictly necessary to protect the public interest.

In such cases, the public administrations shall inform the unions of the reasons for the suspension or modification."

Article 8. Modification of articles 48 and 50 of Act No. 7/2007 of 12 April 2007, the Basic Statutes of the Public Service, and measures concerning additional days

…

II. Article 50 of Act No. 7/2007 of 12 April 2007, the Basic Statutes of the Public Service**,** states:

"Article 50. Holidays of public servants

Public servants shall be entitled to 22 days of paid holiday per calendar year or to a proportionate number of days for employment of less than a year.

For the purposes of this article, Saturdays shall not be considered working days, without prejudice to adaptations made through special working hours."

III. As from the entry into force of this Royal Legislative Decree, all agreements, pacts and conventions for public servants and employees which have been signed by the public administrations and their associated and ancillary bodies and entities and which are not in line with the provisions of this article, particularly with regard to personal leave, holidays, additional days off and the like shall be suspended and without effect.

Article 9. Economic benefits for employees of the public administrations, their associated and ancillary bodies and entities and constitutional bodies who are temporarily unable to work

1. Economic benefits for employees of the public administrations, their associated and ancillary bodies and entities and constitutional bodies who are temporarily unable to work shall be governed by the provisions of this article.

2. Each public administration, within the framework of its respective competencies, may supplement the benefits received by its public servants and staff who are covered by the general social security regime and are temporarily unable to work, subject to the following restrictions:

1. Where the temporary inability to work arises from common contingencies, a supplement may be provided during the first three days up to a maximum of 50 per cent of the remuneration received during the month prior to that in which the inability to work arose. From the fourth to the twentieth day, inclusive, the supplement that may be added to the economic benefit provided by social security must be such that the two benefits, when combined, do not exceed 75 per cent of the remuneration received by the staff member during the month prior to the month in which the inability to work arose. From the twentieth to the ninetieth day, inclusive, the full basic remuneration, the dependent child benefit, where appropriate, and the supplements may be paid.

2. Where the temporary inability to work arose from occupational contingencies, the social security benefit may be supplemented, as from the first day, up to a maximum of 100 per cent per cent of the remuneration received by the staff member during the month prior to the month in which the inability to work arose.

3. Persons who are covered by the special social security scheme for public servants, members of the armed forces and court administrative officials and who, owing to common contingencies, are temporarily unable to work shall receive 50 per cent of their remuneration, both basic and supplemental, and the dependent child benefit, where applicable, from the first to the third day of their temporary inability to work, based on the remuneration that they received during the month prior to that in which the inability to work arose. From the fourth to the twentieth day, inclusive, they shall receive 75 per cent of their remuneration, both basic and supplemental, and the dependent child benefit, where applicable. From the twenty-first to the ninetieth day, inclusive, they shall receive the full basic remuneration, the dependent child benefit, where applicable, and the supplement. Where the temporary inability to work arises from occupational contingencies, the remuneration received may be supplemented, as from the first day, up to a maximum of 100 per cent per cent of the remuneration received during the month prior to the month in which the inability to work arose.

From the ninetieth day onward, the benefit established under each special scheme shall be received in accordance with the applicable regulations.

4. Members of the judiciary and the legal profession, law clerks and judicial staff who are covered by the Judiciary Organization Act and are temporarily unable to work owing to common contingencies shall receive 50 per cent of their remuneration, both basic and supplemental, and the dependent child benefit, where applicable, from the first to the third day of their temporary inability to work, based on the remuneration that they received during the month prior to the month in which the temporary inability to work arose. From the fourth to the twentieth day, inclusive, they shall receive 75 per cent of their remuneration, both basic and supplemental, and the dependent child benefit, where applicable. From the twenty-first to the ninetieth day, inclusive, they shall receive the full basic remuneration, the dependent child benefit, where applicable, and the supplements.

Where the temporary inability to work arises from occupational contingencies, the remuneration received may be supplemented, as from the first day, up to a maximum of the remuneration received by the staff member during the month prior to becoming unable to work.

From the ninetieth day onward, the benefit established in article 20, paragraph 1(B), of Royal Legislative Decree No. 3/2000 of 23 June 2000 shall be received.

5. Each public administration may establish, in respect of its employees, the exceptional circumstances which, when duly substantiated, qualify the employee for a supplement of up to 100 per cent of the remuneration received in the past. In any event, hospitalization and surgical procedures shall be deemed to justify such a supplement.

Under no circumstances may persons who are covered by the special social security scheme for public servants, members of the armed forces and court administrative officials and who are temporarily unable to work owing to common contingencies receive less than the amount received by persons covered by the general social security regime, including any supplements to which the latter are entitled.

6. The references to "days" in this article shall be understood to mean calendar days.

7. Furthermore, current agreements, pacts and conventions that conflict with the provisions of this article shall be suspended.

Article 10. Reduction of union leave

1. Within the framework of the public administrations and ancillary bodies, entities, universities, foundations and societies, as from the entry into force of this Royal Legislative Decree, all union rights – whether referred to as such or by any other name – established in agreements on public servants or statutory personnel or in collective conventions and agreements on workers signed by their representatives or unions, the provisions of which go beyond those of Royal Legislative Decree No. 1/1995 of 24 March 1995 (adopting the revised Workers' Statute Act); Organization Act No. 11/1985 of 2 August 1985 (on freedom of association) and Act No. 7/2007 of 12 April 2007 (the Basic Statutes of the Public Service) concerning hours with pay that may be used for the conduct of union or representation functions, for the appointment of union delegates or as full-day waivers of attendance at the workplace, as well as other union rights, shall be brought fully into line with the provisions of these legislative acts.

Therefore, any collective pacts, agreements and conventions on such matters that have been signed and that go beyond the aforementioned provisions shall be repealed and without effect as from the entry into force of this Royal Legislative Decree.

The foregoing is without prejudice to any future agreements established in the general negotiation committees in order to modify the obligations or work attendance regime of union representatives with a view to the effective performance of their representation and negotiation functions or to the proper exercise of other union rights.

2. The provisions of this article shall remain in force until 1 October 2012.

CASE NO. 2516

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

Complaint against the Government of Ethiopia presented by
– the Ethiopian Teachers' Association (ETA)
– Education International (EI) and
– the International Trade Union Confederation (ITUC)

Allegations: The complainant organizations allege serious violations in the ETA's trade union rights including continuous interference in its internal organization preventing it from functioning normally, and interference by way of threats, dismissals, arrest, detention and maltreatment of ETA members

466. 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 668–692, approved by the Governing Body at its 316th Session (November 2012)].

467. The Government sent its observations in a communication dated 8 March 2013.

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

A. Previous examination of the case

469. At its November 2012 meeting, the Committee considered it necessary to draw the special attention of the Governing Body to this case because of the extreme seriousness and urgency of the matters dealt with therein and made the following recommendations [see 365th Report, paras 4 and 692]:

(a) The Committee once again strongly urges the Government to take all necessary measures to ensure that the appropriate authorities register the NTA without delay so that teachers may fully exercise their right to form organizations for the furthering and defence of teachers' occupational interests without further delay. It expects that the Government will provide information on the concrete steps taken in this regard.

(b) The Committee strongly urges the Government to take the necessary measures, without delay, to ensure that the Charities and Societies Proclamation is not applicable to workers' and employers' organizations and that such organizations are ensured effective recognition through legislation which is in full conformity with the Convention. It expects that the Government will provide information on the progress made in this regard.

(c) The Committee expects that the Government will undertake, without delay, concrete measures, including in the framework of the civil service reform, in order to fully guarantee the right of civil servants, including teachers in public schools, to establish and join organizations of their own choosing for the promotion and defence of their occupational interests. It requests the Government to keep it informed of all progress made in this respect.

(d) The Committee once again urges the Government to provide it with the reports of the various investigations into the allegations of torture and maltreatment of the detained persons.

(e) The Committee requests the complainants and the Government to provide relevant and detailed information in respect of the alleged dismissal and denial of reinstatement of Mr Wondwosen Beyene.

(f) The Committee requests the Government to provide without delay a copy of the findings and conclusions of the disciplinary committee in the case of Ms Demissie.

(g) The Committee once again urges the Government to initiate a full and independent investigation into the allegations of harassment in September–November 2007 of Ms Berhanework Zewdie, Ms Aregash Abu and Mr Wasihun Melese, all members of the National Executive Board of the complainant organization; as well as over 50 of its prominent activists in order to determine responsibilities, punish the guilty parties and prevent the repetition of similar acts. It requests the Government to keep it informed in this respect.

(h) The Committee once again urges the Government to conduct an independent investigation into the allegations of harassment of seven trade unionists which occurred between February–August 2008 and to provide a detailed reply as to its outcome.

B. The Government's observations

470. In a communication received on 8 March 2013, the Government expresses the wish to strengthen its continuing collaboration with the supervisory system of the ILO. It regrets that the question of the National Teachers' Association (NTA) and other issues are unfortunately preventing full and amicable handling of the matter at hand and unduly affect Ethiopia's engagement with the supervisory system and beyond. The Government states that it will continue to provide fact-based and legally grounded responses to explain the situation which might not have been adequately considered by the system at different levels, so as to enhance greater understanding of the measures taken by the Government consistent with ILO standards. Ethiopia remains sincerely committed to ensure compliance with the relevant Convention.

471. The Government underlines that the right to form associations is a constitutionally guaranteed and enforced right in Ethiopia. The NTA has failed to qualify for registration with the competent legal institution in the country. In the Government's view, the NTA's registration question is used to evaluate and make unwarranted comments on Ethiopia's legal system as a whole with particular reference to the Charities and Associations Proclamation and the Anti-Terrorism Proclamation. The Government believes that these laws comply with Ethiopia's international obligations and that it is not correct to cite them and draw unsupported claims casting doubt on Ethiopia's commitment to freedom of association. The Government is firmly committed to foster an environment that allows for robust democratic practices, particularly as concerns the right to association.

472. The Government indicates that more civil society associations have been formed since the passing of the Charities and Societies Proclamation, and that these associations continue to be actively engaged on behalf of their constituencies without any impediment. The Government further explains that the spirit and the letter of the Anti-Terrorism Proclamation do not affect legally registered associations peacefully advancing their causes in any way whatsoever, but rather safeguard the safety of all people in Ethiopia against any terrorist act. According to the Government, the law was drafted based on best practices from around the world (including countries said to be mature democracies) and in full compliance with international obligations.

473. The Government also states that it has learned that a sizeable number of former NTA members have renewed their membership in the legally registered ETA and have even accessed the benefits accrued to them as dues-paying members, and that many among the NTA claimants are not currently public school teachers.

474. The Government therefore reiterates the wish that the consideration of this case be concluded without any further delay and unnecessary contention, and expresses the view that an ILO visit to Ethiopia for an in-depth dialogue with the Ministry, other relevant officials, and all relevant associations could be useful.

C. The Committee's conclusions

475. *The Committee recalls that the present case refers to allegations relating to the exclusion of teachers in the public sector from the right to join trade unions by virtue of the national legislation; the refusal to register the NTA (previously the ETA) and interference in its administration and activities; and harassment, arrest, detention and maltreatment of teachers in connection with their affiliation, first to the ETA (prior to the court judgment as to the legitimate executive board), and then to the NTA. The Committee further recalls that it has been addressing very serious allegations of violations of freedom of association involving governmental interference in the administration and functioning of the then ETA,*

and the killing, arrest, detention, harassment, dismissal and transfer of its members and leaders since November 1997 [see Case No. 1888].

476. *The Committee notes the Government's general observations that: (i) in the Government's view, the issue of the NTA's registration is being used to evaluate and make unwarranted comments on Ethiopia's legal system; (ii) the consideration of this case should be concluded without any further delay; and (iii) an ILO visit to Ethiopia for an in-depth dialogue with the Ministry, other relevant officials, and all relevant associations could be useful. The Committee notes that an ILO mission subsequently undertook a working visit to the country at the invitation of the Minister of Labour and Social Affairs, and takes due note of the mission report. The Committee welcomes the outcome of the mission in the form of the Joint Statement on the Working Visit of the ILO Mission to Ethiopia, which was signed on 16 May 2013 by the Minister of Labour and Social Affairs, on behalf of the Government of Ethiopia, and by the Director of the International Labour Standards Department, on behalf of the International Labour Organization (see appendix).*

477. *As regards the NTA's registration (recommendation (a)), the Committee notes the Government's statement that: (i) while the right to form associations is a constitutionally guaranteed and enforced right in Ethiopia, the NTA has failed to qualify for registration with the competent legal institution in the country; (ii) a sizeable number of former NTA members have renewed their membership in the legally registered ETA and accessed the benefits accrued to them as dues-paying members; and (iii) many among the NTA claimants are not currently public school teachers. The Committee further notes that, according to the Joint Statement, the Government is ready and committed to register the NTA under the Charities and Societies Proclamation (No. 621/2009), and, following discussions with the Charities and Societies Agency (CSA), agreement was reached to register the NTA in accordance with the Proclamation. In addition, the Committee notes that, according to the report recently submitted under article 22 of the ILO Constitution, the Government indicates that: (i) it has never denied the registration of the NTA, rather it is the organization that has failed to fulfil the registration requirements under the Charities and Societies Proclamation; and (ii) since the signing of the Joint Statement, the NTA has never appeared for registration. As regards the registration requirements, the Committee recalls its reference, in its previous examination of the case, to the 2010 observation of the Committee of Experts on the Application of Conventions and Recommendations, in which the latter had identified a number of provisions of the Charities and Societies Proclamation that raise issues of compatibility with the Convention. Furthermore, the Committee considers that the fact that more than four years have elapsed since the NTA's request for registration without any decision being issued by the CSA (whether affirmative or negative) has deprived this organization of the effective possibility to appeal. The Committee also recalls that such a long registration procedure constitutes a serious obstacle to the establishment of organizations and amounts to a denial of the right of workers to establish organizations without previous authorization. Moreover, and in view of the Government's indication that several former NTA members no longer teach or have become ETA members, the Committee takes due note of the information provided by the NTA to the mission, according to which the long idle time as a non-registered association and years of harassment have led to a situation where the conditions that the NTA had met, or could have easily met at the time of application, might be difficult or impossible to fulfil at present. The Committee, encouraged by the commitment undertaken by the Government in the Joint Statement, firmly expects that, in light of the special circumstances described above, the necessary measures will be taken to ensure that the appropriate authorities promptly and unconditionally register the NTA on the basis of its outstanding request, so as to finally bring to a resolution this longstanding issue in a manner which is compatible with the principles of freedom of association.*

478. *With respect to the freedom of association rights of civil servants, including teachers (recommendations (b) and (c)), the Committee notes once again the Government's indication that: (i) the Charities and Associations Proclamation fully complies with Ethiopia's international obligations, and that, since its adoption, more civil society associations have been formed and continue to be actively engaged on behalf of their constituencies without any impediment; and (ii) that the Anti-Terrorism Proclamation fully complies with Ethiopia's international obligations and was drafted based on best practices around the world, and its spirit and letter do not affect legally registered associations peacefully advancing their causes and safeguard the safety of all people in Ethiopia against any terrorist act. The Committee further notes that, according to the Joint Statement: (i) the Government reiterates its commitment and determination to follow up on the Committee's comments concerning the Federal Civil Servants Proclamation, and indicates that the civil service reform is a broad exercise and that a recent comprehensive assessment review has proposed a civil service reform roadmap; (ii) there is a common understanding of all parties concerned that the Constitution embeds the right of all workers to be able to establish and join organizations of their own choosing; (iii) the Government takes note of the view of the ILO supervisory bodies that the current legislative framework does not fully give effect to this right as regards the civil servants, since the Charities and Societies Proclamation only enables individual civil service associations to be registered as professional associations; and (iv) in this regard, the Government reaffirms its commitment to the mission to continue to make every effort to address these issues as a matter of priority. Encouraged by the Government's commitment and having understood from the mission report that the comprehensive civil service reform has recently undergone major adjustments, the Committee highlights that freedom of association is an enabling right which renders possible the exercise of all other rights at work, and firmly expects that, while pursuing the civil service reform, the right to organize will be granted as a matter of priority to all civil servants, including teachers in public schools and employees of the state administration.*

479. *In the absence of any information provided by the Government concerning its recommendations (d)–(h) (earlier allegations of torture and maltreatment in detention and dismissal and harassment of trade union officials and members of the then ETA (now the NTA)), the Committee finds itself obliged to reiterate the conclusions and recommendations it made when it examined this case at its meeting in November 2012 [see 365th Report, paras 686–692].*

480. *Lastly, noting that, according to the Joint Statement, the Government and the national employers' and workers' organizations consider that ILO technical assistance would be important to assist them in moving forward on the issues raised by the ILO supervisory bodies, the Committee expects that all necessary measures will be taken to put in place such technical assistance in the very near future.*

The Committee's recommendations

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

(a) The Committee, encouraged by the commitment undertaken by the Government in the Joint Statement, firmly expects that the necessary measures will be taken to ensure that the appropriate authorities promptly and unconditionally register the NTA on the basis of its outstanding request, so as to finally bring to a resolution this longstanding issue in a manner which is compatible with the principles of freedom of association. It requests the Government to keep it informed in this respect.

(b) Encouraged by the Government's commitment to continue to make every effort to address these issues as a matter of priority and having understood from the mission report that the comprehensive civil service reform has recently undergone major adjustments, the Committee highlights that freedom of association is an enabling right which renders possible the exercise of all other rights at work, and firmly expects that, while pursuing the civil service reform, the right to organize will be granted as a matter of priority to all civil servants, including teachers in public schools and employees of the state administration. It requests the Government to keep it informed in this respect.

(c) The Committee urges the Government once again to:

(i) provide it with the reports of the various investigations into the allegations of torture and maltreatment of the detained persons;

(ii) initiate a full and independent investigation into the allegations of harassment in September–November 2007 of Ms Berhanework Zewdie, Ms Aregash Abu and Mr Wasihun Melese, all members of the National Executive Board of the complainant organization, as well as over 50 of its prominent activists, in order to determine responsibilities, punish the guilty parties and prevent the repetition of similar acts; and keep it informed in this respect;

(iii) conduct an independent investigation into the allegations of harassment of seven trade unionists which occurred between February–August 2008 and provide a detailed reply as to its outcome;

(iv) provide relevant and detailed information in respect of the alleged dismissal and denial of reinstatement of Mr Wondwosen Beyene; and

(v) supply without delay a copy of the findings and conclusions of the disciplinary committee in the case of Ms Demissie.

(d) Noting that, according to the Joint Statement, the Government and the national employers' and workers' organizations consider that ILO technical assistance would be important to assist them in moving forward on the issues raised by the ILO supervisory bodies, the Committee expects that all necessary measures will be taken to put in place such technical assistance in the very near future.

Appendix

Joint Statement on the Working Visit of the ILO Mission to Ethiopia

An ILO Mission headed by Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department, made a working visit to the Federal Democratic Republic of Ethiopia at the invitation of the Minister of Labour and Social Affairs from 13 to 16 May 2013.

The Mission met with the Minister of Labour and Social Affairs, H.E. Mr Abdulfatah Abdullahi, High Officials and Representatives from the Ministry of Foreign Affairs, Office of the Government Communications, the Ministry of Education, the Ministry of Justice, the Ministry of Civil Service, the Charities and Societies Agency, the Federal Police Commission, the Ombudsman, the Confederation of Ethiopian Trade Unions, the Ethiopian Employers' Federation, the Ethiopian Teachers' Association (ETA), National Teachers' Association (NTA), the Ethiopian Human Rights Commission and the Human Rights Council.

The objective of the Mission was to conduct an in-depth dialogue with all the institutions and organizations referred to above with a view to: (1) making progress towards a resolution of Case No. 2516 under examination by the ILO Committee on Freedom of Association (CFA) since 2007; and (2) to strengthen the Government's continuing collaboration with the ILO supervisory system. The discussions specifically focused on the follow-up to CFA Case No. 2516 and the pending legislative issues raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) under ILO Conventions Nos 87 and 98.

All meetings and discussions were honest, open, constructive and results-orientated. The Government expressed its strong political will and commitment to see these long-standing issues before the ILO supervisory bodies resolved. A number of concrete suggestions were put forward by both the Government and the ILO Mission to address the pending questions. Based on discussions on these suggestions, the following elements of a possible plan of action are set out:

(1) Follow-up to CFA Case No. 2516

The Government is ready and committed to register the National Teachers' Association (NTA) under the Charities and Societies Proclamation (No. 621/2009). Following discussions with the Charities and Societies Agency, agreement was reached to register the NTA in accordance with the proclamation.

(2) Follow-up to pending legislative issues

The legislative issues that have been raised by the CEACR concern the Labour Proclamation (No. 377/2003), the Civil Servants Proclamation (No. 515/2007) and the Charities and Societies Proclamation. In view of the fact that the CEACR has been requesting the Government for several years to amend certain provisions of the Labour Proclamation and the Civil Servants Proclamation, the Government has reiterated its commitment and determination to follow-up on these comments.

With respect to the Labour Proclamation, the Government has reviewed all relevant provisions and the Tripartite Labour Advisory Board has completed its review of these amendments which will soon be submitted to the Council of Ministers. The Government commits to do all it can to expedite the process for the submission of the amendments to Parliament.

Concerning the Civil Servants Proclamation, the Government indicates that the civil service reform is a broad exercise and a recent comprehensive assessment review undertaken is proposing a Civil Service Reform Roadmap. There is a common understanding of all parties concerned that the Constitution embeds the right of all workers to be able to establish and join organizations of their own choosing. The Government takes note of the view of the ILO Supervisory Bodies that the current legislative framework does not fully give effect to this right as regards the civil servants, since the Charities and Societies Proclamation only enables individual civil service associations to be registered as professional associations. In this regard, the Government, reaffirmed its commitment to the Mission to continue to make every effort to address these issues as a matter of priority.

(3) ILO technical assistance

The Government, employers' and workers' organizations consider that ILO technical assistance would be important to assist them in moving forward. Such assistance can take the form of legislative advice, capacity building and training on reporting obligations with respect to ratified ILO Conventions and in the areas of freedom of association, social dialogue, human trafficking for labour exploitation and labour market information systems as well as other forms of assistance upon the requests of the Government, employers' and workers' organizations.

Signed, this day 16 May 2013

(Signed) On behalf of the Government of Ethiopia

(Signed) On behalf of the International Labour Organization

H.E. Mr Abdulfatah Abdullahi
Minister, Ministry of Labour and Social Affairs

Ms Cleopatra Doumbia-Henry
Director, International Labour Standards Department

CASE NO. 2749

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

Complaint against the Government of France presented by
– the Martinique Democratic Workers' Confederation (CDMT) and
– the CDMT–Postes

Allegations: The complainant organizations denounce the refusal by the management of the enterprise La Poste to recognize the representative nature of the CDMT–Postes trade union and to allow it to carry out its activities within the enterprise, as well as the anti-union disciplinary action taken against its Secretary-General

482. The complaint is contained in communications dated 20 October 2009, 14 January, 15, 23 and 30 March and 19 April 2010, 31 January 2011, 1 August 2012 and 14 January 2013 by the Martinique Democratic Workers' Confederation (Centrale démocratique martiniquaise des travailleurs (CDMT)) and its affiliated trade union CDMT–Postes.

483. The Government provided its observations in a communication dated 11 August 2010.

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

A. The complainants' allegations

485. In their successive communications, the complainants denounce the anti-union discrimination against the CDMT–Postes trade union, an organization affiliated to the CDMT, since its establishment in the enterprise La Poste (referred to hereafter as "the enterprise"). They recall that the CDMT–PTT trade union had existed in the enterprise since 1979. That trade union was reconstituted under the name "CDMT–Postes" in February 2008, under the leadership of a Secretary-General, Mr Hervé Pinto. Mr Pinto has been an established staff member since 1990 and has been head of the mail and parcels team at the mail and parcels preparation and distribution (PPDC) hub in Fort-de-France, Martinique since 2004. He carried out trade union activities in several unions (*Département* secretary of the FNSA/PTT, then enterprise secretary at Sud PTT Martinique) before being elected Secretary-General of the CDMT–Postes trade union in February 2008.

486. The complainants denounce the fact that Mr Pinto's managers systematically opposed the exercise of his trade union activities in all their forms, on the grounds that they did not consider CDMT (the second highest placed trade union in the elections for labour courts in Martinique in December 2008) to be a representative union in the enterprise. The complainants point out that the enterprise, through the conclusion of a framework agreement of 27 January 2006 on exercising the right to organize, had limited the trade union rights on its premises solely to representative organizations, namely those that had obtained at least 10 per cent of the votes cast in occupational elections. However, CDMT–Postes, which had just been established, had not yet taken part in any election whatsoever and could not therefore claim to be a representative organization within the enterprise.

487. By way of example, the complainants denounce the fact that CDMT–Postes was excluded from the first meeting of the *Département* Director of the enterprise with all the trade union organizations following his appointment. The organization was also excluded from the meeting with the Overseas Director of La Poste when she visited Martinique in November 2008, as well as from the discussions concerning, in particular, reorganization of the very site where its Secretary-General was working. In response to CDMT–Postes' requests to be given an explanation and to be allowed to participate, the management of the enterprise invariably argued that the union could not be regarded as representative and that it could not therefore benefit from the advantages and prerogatives accorded to representative unions, such as access to the enterprise's premises and to postal services. Similarly, after it had submitted a notice of strike action in December 2008, the organization received the response from the management of the enterprise that it was obliged to refuse such a notice from a non-representative organization.

488. The CDMT–Postes states that it appealed to the administrative courts alleging denial of its rights, but that its appeals were rejected, notably by the judge for urgent applications at the Administrative Tribunal in Fort-de-France and the Office for Summary Proceedings at the Council of State *(Conseil d'Etat)*, on the grounds of the existence of the Framework Agreement of 27 January 2006 and a lack of urgency to take action.

489. However, the complainants note that, in an important judgment dated 15 May 2009 (CE, 15 May 2009, Fédération CNT–PTT), the Council of State ultimately annulled, in its entirety, the Framework Agreement of 27 January 2006. In the complainants' view, the automatic result of this judgment is that all the bans on the exercise of his trade union functions imposed on Mr Pinto by the management of the enterprise were illegal. On 2 June 2009, CDMT–Postes accordingly asked the management of the enterprise to draw the conclusions from the decision of the Council of State, but there was no favourable follow-up to this request. According to the complainants, the conflict between

CDMT–Postes and the enterprise led to disciplinary action being taken against the Secretary-General of the trade union in September 2009. In October 2009, he was notified of a two-year suspension of functions and salary as a disciplinary measure. The Secretary-General, who had already been suspended for four months in 2008, instituted numerous appeals against the suspension orders, and in particular against the order issued by the enterprise's Central Disciplinary Board.

490. In this connection, the complainants consider that Mr Pinto was unjustly sanctioned for having merely attempted to carry out his trade union functions. They recall that Martinique experienced a major earthquake in November 2007, which seriously damaged some of the enterprise's facilities. Mr Pinto's PPDC hub was relocated, as an emergency measure, to the Dillon postal sorting centre. The working conditions at that site, in a sensitive urban area, proved to be extremely difficult. In his dual capacity as a supervisor and a trade union official, Mr Pinto repeatedly warned his line managers of the serious shortcomings with regard to the health and safety of his team, seeking improvements in their working conditions. Between January and December 2008 he wrote 29 notes to his line managers warning them of these shortcomings.

491. The complainants denounce the fact that, in the meantime, despite the Council of State's judgment of 15 May 2009 annulling the 2006 framework agreement between the enterprise and the trade unions, the management of the enterprise continued to refuse to grant CDMT–Postes the same facilities as the other trade union organizations present. In July 2012, the various appeals against the enterprise's position had still not been the subject of a decision.

492. Furthermore, the complainants allege that, during the elections to technical committees held in October 2011, CDMT–Postes proved its representative nature by obtaining more than 10 per cent of the votes in two workplaces (FDF–CTC and FDF–PCD1), as evidenced by the polling records. The management of the enterprise, on the other hand, did not read the results in the same way and continues not to recognize the representative nature of the trade union in these workplaces. In the meantime, the situation with regard to social dialogue in the enterprise has deteriorated. The enterprise's inter-union association has had to denounce "the aggression, contempt, authoritarian attitude and threats issued by the management" (October 2012).

493. Concerning Mr Pinto's situation, the complainants state that, following his appeal against denial of his trade union rights, the Public Prosecutor's Office ordered a preliminary investigation in May 2010 and hearings were held with the parties involved, notably the director of the enterprise and his staff. According to the complainants, however, it is still not known what action has been taken as a result of the procedure initiated by the Prosecutor. The complainants state that that ultimately the court found in favour of Mr Pinto, annulling the two-year temporary suspension order that had been imposed on him (judgment of the Fort-de-France Administrative Tribunal of 14 April 2011). However, CDMT–Postes denounces the fact that, following that judgment and his reinstatement, the enterprise again notified him of a two-year suspension from duty as from December 2011. Similarly, the complainants regret the fact that the Bordeaux Administrative Appeal Court rejected Mr Pinto's appeal for confirmation of the first instance judgment but also for a ruling that he was sanctioned for his trade union activities.

494. Lastly, in a communication dated August 2013 CDMT–Postes denounces the anti-union harassment of its Secretary-General. During a peaceful demonstration by the trade union on the occasion of the visit by the Prime Minister (June 2013), Mr Pinto was the victim of an assault by law enforcement officers, and he has been summoned to appear before the Criminal Court at a hearing scheduled for May 2014.

B. The Government's reply

495. In a communication dated 11 August 2010, the Government recalls that La Poste (referred to hereafter as "the enterprise") has since 1 January 1991 been an "independent operator under public law" with the legal form of a public industrial and commercial establishment (*établissement public industriel et commercial* (EPIC)), and the enterprise and its subsidiaries form a public group fulfilling missions of general interest and carrying out competitive activities under the specific arrangements provided for by the Post and Electronic Communications Code. The staff of the enterprise are governed by particular statutes implemented under Act No. 83-634 of 13 July 1983 governing the rights and obligations of public officials, Act No. 84-16 of 11 January 1984 containing statutory provisions concerning the government civil service, and the Act of 20 May 2005 on regulation of postal activities.

496. With regard to the right to organize, the enterprise has been made subject to Decree No. 82-447 of 28 May 1982 governing the exercise by state employees of their right to organize. In addition, on 27 January 2006, the enterprise and several trade union organizations had concluded a framework agreement specifying the arrangements for exercising the right to organize and for distributing the resources allocated to the representative trade union organizations. However, the Government confirms that this framework agreement was annulled in its entirety by a judgment issued by an administrative court (Council of State, 15 May 2009). Reference should therefore be made from then on to the provisions of the 1982 Decree. Although at the outset they were close to those under the Labour Code, they have been markedly different since the Code was modernized by the Act of 20 August 2008.

497. The Government recalls that freedom of association is guaranteed as a constitutional value. In addition, section L.2141-4 of the Labour Code states that "The exercise of the right to organize shall be recognized in all enterprises, subject to respect for the rights and freedoms guaranteed by the Constitution of the Republic, and in particular the individual freedom to work". The primary mission of trade unions is to defend employees. This finds expression notably in the industrial action that trade unions take and the legal proceedings that they initiate, either in the interests of the union or in the individual interest of employees. Under section L.2142-3 of the Labour Code, trade union notices may be posted up freely on the noticeboards reserved for the purpose and distinct from those intended for communications from the staff delegates and the works committee. The noticeboards shall be placed at the disposal of each trade union branch, in accordance with arrangements to be made by agreement with the employer. Posting does not require prior authorization; a copy of such notices shall be forwarded to the employer at the same time as they are posted up (section L.2142-3). Trade union publications and handbills may be freely distributed, within the premises of the enterprise, to the employees of the enterprise at the times of their arriving for and leaving work (section L.2142-4). In order to prevent anti-union discrimination, the law makes provision, in section L.1132-1 of the Labour Code, for a general principle of non-discrimination that includes, in particular, anti-union discrimination: "No person shall be ... subject to a discriminatory measure, whether direct or indirect, [on the grounds] of his or her trade union or mutual benefit society activities ... ". Since section L.1132-4 of that Code states that "any discriminatory decision or act against an employee in contravention of the provisions of this chapter is void", an adverse action against an employee on the grounds of his or her trade union activity must remain null and void. In addition, section L.2141-5 of the Labour Code enshrines the principle of no anti-union discrimination. This principle of non-discrimination applies on two levels: first, from the point of employees, because their freedom of association is protected, notably against the employer's management prerogatives, and, second, from the point of view of trade unions, who may not be subject to any pressure by an employer. These provisions are a matter of public order; any action taken by an employer contrary to

them shall be deemed to be an abusive practice and shall render them liable for damages (section L.2141-8 of that Code). Section L.2146-2 of the Labour Code provides, in addition, for penal sanctions for any infringement of sections L.2141-5 to L.2141-8 of that Code concerning discrimination that affects the exercise of the right to organize.

498. The Government also recalls that, under the law, no one may be subject to discrimination in employment by reason of present or past membership of a trade union or participation in legitimate union activities. Similarly, no one may be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities. Under section L.1134-1 of the Labour Code, the employee is responsible for submitting to the judge "factual elements allowing it to be supposed that there is direct or indirect discrimination" and, in the light of those elements, it is up to the employer to "prove that this apparent discrimination is founded on objective elements, separate from any discrimination", with the judge reaching a conclusion after having ordered such measures of investigation as he or she deems fit. Lastly, section L.2141-5 of the Labour Code forbids the employer from taking disciplinary measures by reason of an employee's union membership. The sanction for such a measure is its annulment and the payment of damages for the injury suffered. Protection against acts of anti-union discrimination is extended to employees, union members, former union officials and current union representatives, with the latter benefitting from special stronger protection.

499. Trade union representativeness is defined in the Labour Code in section L.2121-1 et seq. It confers certain additional prerogatives on representative trade unions: for instance, they are authorized to conclude collective labour agreements (section L.2231-1) and have a monopoly on calling strikes in public services.

500. The Government indicates that CDMT–Postes, in its observations, questions the ability of a legally constituted trade union to become representative if it is prohibited from exercising its "freedom to campaign, freedom to defend those workers who have mandated it to do so, and freedom of trade union action" in order to make itself better known by employees. In this regard, section 3 of Decree No. 82-447 of 28 May 1982 provides that the administration "when the total staff of a service or group of services [is] greater than 50 officials, shall make available to the most representative trade union organizations with branches in the establishment concerned premises to be used in common by the various organizations. So far as practicable, the administration shall make separate premises available to each of these organizations … the premises made available to trade union organizations shall comprise the facilities required to carry out trade union activity ... ." Furthermore, in accordance with section 8 of the 1982 decree, "trade union notices shall be posted up on the noticeboards reserved for the purpose and arranged so as to ensure the retention of such notices. Such noticeboards shall be placed in premises that are readily accessible by the staff but to which the public do not normally have access."

501. In its estimation, the management of the enterprise applied the provisions of the Labour Code with regard to the right to organize through the now lapsed 2006 framework agreement, reserving to representative trade unions alone the whole range of prerogatives concerning the right to organize. According to the Government, CDMT–Postes, although a non-representative trade union in the enterprise, nonetheless has the right to campaign and to disseminate trade union notices. This right of communication falls within the ambit of its activity and that of freedom of association, as confirmed by the Council of State in its decision of 15 May 2009. For the Government, the enterprise has decided to comply with the provisions in force.

502. With regard to the ability of the complainant trade union to take part in elections owing to its non-representative nature, the Government recalls that, under section 9bis of Act No. 83-634 of 13 July 1983, "Shall be considered as representative of the entirety of the

staff and subject to the provisions of the present Act those civil servants' trade unions or trade union associations which: (1) hold at least one seat in each of the upper councils ... ; or (2) obtain at least 10 per cent of the total votes cast in the elections ... ". In addition, under section 14 of Act No. 84-16 of 11 January 1984, the organizations affiliated to the organizations defined above and those meeting the provisions of section L.2121-1 of the Labour Code shall be considered as representative.

503. The Government adds that the bill on renewal of social dialogue in the civil service is close to Act No. 2008-789 of 20 August 2008, which applies to the private sector. It gives effect to the objectives and commitments set out above, by broadening the conditions for taking part in elections and no longer making the presentation of lists (of candidates) conditional on certain criteria of representativeness or on benefitting from a presumption of representativeness. All trade unions that have been legally constituted for at least two years and meet the criteria of respect for republican values and of independence will thus be eligible to stand for occupational elections. These new rules governing access to elections are applicable to all occupational elections in the civil service.

504. Lastly, the Government emphasizes that the rights granted to a legally constituted trade union organization should not be confused with the prerogatives stemming from its representative nature. On the one hand, a trade union's lack of representativeness by no means calls into question its existence and the rights that arise therefrom; on the other hand, the representative nature of a trade union should be assessed as a capacity, not a right.

505. With regard to the legislation applicable to the staff of the enterprise, Act No. 2010-751 of 5 July 2010 concerning renewal of social dialogue and comprising several provisions relative to the civil service has been adopted. This Act provides for: (i) development of national social dialogue in the civil service, expansion of issues that can be the subject of negotiation, and redefinition of the arrangements for access to occupational elections, with abolition of the requirement of prior representativeness for trade unions; (ii) establishment of a Higher Council for the Civil Service *(Conseil supérieur de la fonction publique)*, a new joint consultative body for the three civil service categories; and (iii) guarantees for trade union representatives in terms of their careers (the skills acquired in carrying out trade union duties will be taken into account as occupational experience acquired on the job). The Government emphasizes that Act No. 2010-751 of 5 July 2010 thus affords new rights and additional guarantees for the exercise of trade union rights in the public sector, and further protection against the risks of anti-union discrimination.

506. The Government recalls that the rights of the CDMT–Postes trade union were strengthened following the Council of State's judgment of 15 May 2009, in accordance with the provisions of Decree No. 82-447 of 28 May 1982. The complainant trade union was informed by the management of the enterprise in a letter dated 30 July 2009 that it chose to apply that decision in full. No evidence has been brought to the attention of the Government to show that La Poste has not honoured this commitment to comply with the statutory provisions and judicial rulings on this matter.

507. The Government observes that the complainant organization has exercised its right of appeal as regards administrative decisions to the administrative courts of first instance (Administrative Tribunal), appeal (Administrative Appeal Court) and cassation (Council of State). The impartiality of the legal system is indisputable. Since the Council of State's judgment of 15 May 2009, the various judicial decisions of 2009 and 2010 have rejected the applications by CDMT–Postes. Furthermore, Mr Pinto has instituted numerous proceedings on his case. The Fort-de-France Administrative Tribunal, in a decision of 13 January 2010, rejected Mr Pinto's applications for summary proceedings on the grounds that the condition of urgency, as defined in section L.521-1 of the Administrative Justice

Code, had not been met. Furthermore, the High Authority for the Fight against Discrimination (HALDE), the independent administrative authority to whom Mr Pinto had appealed, decided to close the dossier and informed CDMT–Postes of that decision in a letter dated 5 March 2010, since it did not consider that the acts of anti-union discrimination complained of were proven. Lastly, the Bordeaux Administrative Appeal Court, in a decision of 11 May 2010, rejected Mr Pinto's appeal to have the Fort-de-France Administrative Tribunal's judgment of 5 February 2009 overturned, denying his applications against the two decisions to impose disciplinary sanctions on him.

508. In conclusion, the Government considers that its panoply of legal instruments is sufficient to ensure compliance with the standards of the International Labour Organization and put an end to any situation that might be regarded as discriminatory or restricting freedom of association.

C. The Committee's conclusions

509. *The Committee notes that the complaint concerns allegations that the management of the enterprise La Poste (referred to hereafter as "the enterprise") refused to recognize the representative nature of the CDMT–Postes trade union and thus to allow it to carry out its activities within the enterprise, as well as allegations of anti-union discrimination against the Secretary-General of the trade union.*

510. *With regard to the allegations concerning the refusal by the management of the enterprise to recognize the representative nature of the CDMT–Postes trade union and thus to allow it to carry out its activities on the premises, the Committee notes that, according to the complainant organizations, the CDMT–PTT trade union existed within the enterprise from 1979 and that it was renamed "CDMT–Postes" in February 2008, under the leadership of a Secretary-General, Mr Hervé Pinto. The Committee notes that the enterprise, through the conclusion of a Framework Agreement of 27 January 2006 on exercising the right to organize, had limited the trade union rights on its premises solely to representative organizations, namely those that had obtained at least 10 per cent of the votes cast in occupational elections. However, CDMT–Postes, which had just been reconstituted, had not yet taken part in any election whatsoever and could not therefore claim to be a representative organization within the enterprise. Consequently, CDMT–Postes denounces the fact that it was excluded from meetings between the management and the social partners, and from organizational meetings. In response to its requests for explanations, the management of the enterprise invariably argued that the union could not be regarded as representative and that it could not therefore benefit from the advantages and prerogatives accorded to representative unions, such as access to the enterprise's premises and to postal services.*

511. *The Committee notes that the trade union brought cases before the administrative courts (the judge for urgent applications at the Administrative Tribunal of Fort-de-France and the Office for Summary Proceedings at the Council of State), which always rejected the appeals on the grounds of the existence of the Framework Agreement of 27 January 2006 and a lack of urgency to take action. Nonetheless, the Committee observes that, in a judgment dated 15 May 2009 (CE, 15 May 2009, Fédération CNT–PTT), the Council of State ultimately annulled, in its entirety, the Framework Agreement of 27 January 2006. The Committee notes that, according to the complainant organizations, CDMT–Postes unsuccessfully asked the management of the enterprise to draw the conclusions from the Council of State's decision.*

512. *The Committee notes that, according to the Government, the enterprise was subject to Decree No. 82-447 of 28 May 1982 governing the exercise by state employees of their right to organize. In addition, on 27 January 2006, the enterprise and several trade union*

organizations had concluded a framework agreement specifying the arrangements for exercising the right to organize and for distributing the resources allocated to the representative trade union organizations. However, the Government confirms that this framework agreement was annulled in its entirety by a judgment issued by the Council of State on 15 May 2009. Since then, the legislation applicable to the staff of the enterprise has been Act No. 2010-751 of 5 July 2010, concerning renewal of social dialogue. This Act thus affords new rights and additional guarantees for the exercise of trade union rights in the public sector, and further protection against the risks of anti-union discrimination.

513. *Lastly, the Committee notes that the Government emphasizes that the rights granted to a legally constituted trade union organization should not be confused with the prerogatives stemming from its representative nature. On the one hand, a trade union's lack of representativeness by no means calls into question its existence and the rights that arise therefrom; on the other hand, the representative nature of a trade union should be assessed as a capacity, not a right.*

514. *While welcoming the Government's position and the new framework henceforth governing the activities of trade unions within the enterprise, the Committee notes however that the complainants still report, three years later and with supporting documentation, obstacles raised by the enterprise to the free exercise of trade union activities by CDMT–Postes. The Committee recalls, with regard to the facilities to be granted to workers' representatives, that Convention No. 135 (which France has ratified) calls for such facilities to be provided in the enterprise as may be appropriate in order to enable workers' representatives to carry out their functions promptly and efficiently, and in such a manner as not to impair the efficient operation of the enterprise concerned. In this connection, workers' representatives should be granted access to all workplaces in the enterprise where such access is necessary to enable them to carry out their representation function. Trade union representatives who are not employed in the enterprise but whose trade union has members employed therein should be granted access to the enterprise. The granting of such facilities should not impair the efficient operation of the enterprise concerned. [See* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paragraphs 1098, 1104 and 1105.] Furthermore, the granting of facilities to workers' representatives may also include, inter alia, the granting of time off. Consequently, the Committee urges the Government to ensure that, in accordance with the legislation in force, CDMT–Postes may enjoy the same facilities as are provided to the other legally constituted trade union organizations, notably free access to premises and to its members, and freedom to hold meetings. The Committee requests the Government to provide its observations on the alleged impediments on the part of the enterprise to the activities of CDMT–Postes.*

515. *The Committee notes the complainant's allegations concerning the elections to technical committees held in October 2011, where it was alleged that CDMT–Postes had obtained more than 10 per cent of the votes in two workplaces (FDF–CTC and FDF–PDC1), and the refusal by the management to recognize the representativeness of the union in these workplaces. The Committee notes, from the polling records communicated by the complainant, that the joint list for CDMT–Postes and FNSA/PTT obtained a total of two seats (out of the total of 47 distributed among ten trade union lists). Noting further the protests by CDMT–Postes at the arrangements made for the allocation of seats following the ballot, the Committee requests the Government to indicate whether CDMT–Postes has the possibility of participating in the meetings of the technical committees in the workplaces where it has achieved the required representativeness through the votes cast by workers.*

516. *With regard to the allegations of anti-union discrimination against the Secretary-General of CDMT–Postes, the Committee notes the complainants' statement that it was in his dual capacity as a supervisor and a trade union official that he warned his line managers of the*

need to improve health and safety at his workplace. The Committee observes that, in his arguments before the disciplinary boards and courts where the cases were heard, Mr Pinto has always denounced the fact that he was subject to sanctions by reason of his trade union activities and has thus systematically rejected the rationale put forward concerning his behaviour towards his colleagues and line managers.

517. *The Committee notes that the decision issued by the Fort-de-France Administrative Tribunal on 14 November 2011 annulled the temporary suspension order that had been imposed on Mr Pinto by the Central Disciplinary Board. It notes that Mr Pinto called on the Bordeaux Administrative Appeal Court to confirm the first instance ruling and also to rule that the facts held against him were not established. The Committee observes that the Administrative Appeal Court confirmed the first instance ruling, invalidating the order of the Central Disciplinary Board on procedural grounds. However, the Administrative Appeal Court refused to rule on whether Mr Pinto was sanctioned for his trade union activities, considering that it was not within its competence to examine if such alleged facts against Mr Pinto had been established.*

518. *The Committee takes note of the Government's observations that Mr Pinto instituted numerous proceedings on his personal case. The High Authority for the Fight against Discrimination (HALDE), the independent administrative authority to whom Mr Pinto had appealed, decided to close the dossier and informed CDMT–Postes of that decision in a letter dated 5 March 2010, since it did not consider that the acts of anti-union discrimination complained of were proven. Lastly, the Bordeaux Administrative Appeal Court, in a decision of 11 May 2010, rejected Mr Pinto's appeal to have the Fort-de-France Administrative Tribunal's judgment of 5 February 2009 overturned, denying his applications against the two decisions to impose disciplinary sanctions on him.*

519. *In addition, the Committee notes with regret that in December 2011, following his reinstatement, the enterprise again notified Mr Pinto of a two-year suspension from duty. While observing with regret that, in view of the circumstances, a decision of that kind taken so promptly does not contribute to the establishment of peaceful relations within the enterprise, the Committee has taken note of the reasons put forward for such a decision, which repeated in full those given for the previous suspension, namely Mr Pinto's inappropriate behaviour in the exercise of his duties.*

520. *More generally, the Committee takes note of the copious information submitted for its assessment concerning the disciplinary measures taken against Mr Pinto. The exchanges of notes within the enterprise between Mr Pinto and his line managers reveal difficulties in communicating calmly; the line managers' assessments of Mr Pinto's work as a supervisor are focused on his tasks and shortcomings, and do not mention his trade union functions, except for one allusion; the discussions within the Central Disciplinary Board in September 2008, however, show differences of opinion between the representatives of the staff and the enterprise concerning the link between the disciplinary measures and his trade union functions, but a majority consider that an effort needs to be made in his relations with his fellow workers; Mr Pinto has brought numerous cases before the courts and appeal bodies, but none of them deemed his trade union functions to be grounds for the sanctions imposed; the HALDE rejected his appeal. In consequence, the Committee cannot conclude, on the basis of these observations, that Mr Pinto was subject to disciplinary measures because of his trade union activities.*

521. *Lastly, the Committee notes with concern the recent allegations concerning the violent intervention by law enforcement officers in June 2013 during a peaceful demonstration by the CDMT–Postes on the occasion of the visit by the Prime Minister, and the assault of which Mr Pinto is said to have been the victim. The Committee requests the Government to provide information in this respect.*

The Committee's recommendations

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

(a) The Committee urges the Government to ensure that, in accordance with the legislation in force, CDMT–Postes may enjoy the same facilities as are provided to the other legally constituted trade union organizations, notably free access to premises and to its members, and freedom to hold meetings. The Committee requests the Government to provide its observations on the alleged impediments on the part of the enterprise to the activities of CDMT–Postes.

(b) As regards the recognition of trade union representativeness following the elections to technical committees held in October 2011, the Committee requests the Government to indicate whether CDMT–Postes has the possibility of participating in the meetings of the technical committees in the establishments where it has achieved the required representativeness through the votes cast by workers.

(c) The Committee asks the Government to provide information on the allegations that the Secretary-General of CDMT–Postes was assaulted during a peaceful demonstration in June 2013.

CASE NO. 2203

INTERIM REPORT

Complaint against the Government of Guatemala presented by
– the Trade Union of Workers of Guatemala (UNSITRAGUA) and
– the Guatemalan Trade Union, Indigenous and Campesino Movement (MSICG)

Allegations: Assaults and acts of intimidation against trade union members in a number of enterprises and public institutions; destruction of the headquarters of the trade union operating at the General Property Registry; raiding, ransacking and burning of documents at the headquarters of the union operating at Acrylic Industries of Central America SA (ACRILASA) and anti-union dismissals and the employers' refusal to comply with judicial orders to reinstate trade union members

523. The Committee has examined the substance of this case on seven occasions [see 330th, 336th, 342nd, 348th, 351st, 359th and 364th Reports], the last of which was at its June 2012 meeting, when it submitted an interim report to the Governing Body [see 364th Report, paras 502– 518, approved by the Governing Body at its 315th Session].

524. The Government sent its observations in communications dated 23 and 30 July, and 12 August 2013.

525. 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

526. At its June 2012 meeting, the Committee made the following interim recommendations regarding the allegations presented by the complainant organizations [see 364th Report, para. 518]:

(a) While noting the efforts recently made by the Government to submit information in relation to its previous requests, the Committee deeply regrets that the Government's reply remains incomplete despite the fact that the allegations refer to events which took place several years ago and include acts of violence against trade unionists, acts of discrimination and anti-union interference, and firmly urges the Government to provide information on the pending issues in the very near future.

(b) With regard to the significant obstacles and delays to the collective bargaining process between the Supreme Electoral Tribunal and UNSITRAGUA, as well as the obstacles to the exercise of the right to strike by the trade union, the Committee requests the Government to keep it informed of the outcome of the compulsory arbitration and to send it information concerning the allegation of delays to the right to strike contained in UNSITRAGUA's latest communication, in particular with regard to the alleged refusal by the Supreme Electoral Tribunal to uphold the workers' right to strike during the whole of the electoral period.

(c) With regard to the allegations relating to the Municipality of El Tumbador concerning the reinstatement proceedings ordered by the judicial authority and the dismissal of union officials César Augusto León Reyes, José Marcos Cabrera, Víctor Hugo López Martínez, Cornelio Cipriano Salic Orozco, Romeo Rafael Bartolón Martínez and César Adolfo Castillo Barrios, the Committee deplores this excessive delay and firmly expects that proceedings to reinstate the dismissed workers will be completed in the very near future. The Committee requests the Government to keep it informed of the future ruling on this matter.

(d) Noting that the Government has not provided any information concerning wages owed to the union leader Mr Gramajo, the Committee urges the Government once again to take steps to ensure that all outstanding wages are paid without delay and to keep it informed in this regard.

(e) With regard to the alleged unilateral imposition by the Supreme Electoral Tribunal of an organization manual (dealing with matters related to employees' duties, posts and salary levels), the Committee requests the complainant organizations to indicate whether all the issues regarding the organization manual have been resolved.

(f) As to the remaining allegations, in the absence of the Government's observations, the Committee reiterates its previous recommendations which are reproduced below and urges the Government to send the information and take the actions requested:

– with regard to the allegations concerning assaults, death threats and acts of intimidation against trade unionists, as well as attacks on union headquarters, the Committee deeply regrets that, despite the seriousness of the matter, the Government has not sent full observations, and strongly requests the Government

to refer these cases as a matter of urgency to the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this regard. The Committee again invites the Government to enter into contact with UNSITRAGUA with a view to providing a detailed reply regarding the case relating to the alleged raid in 2002 involving the burning of documents at the headquarters of the trade union at the ACRILASA company; and

– with regard to the allegations concerning employer interference in union elections at the General Property Registry, which was confirmed by the labour inspectorate, the Committee once again requests the Government to take the necessary measures without delay to sanction the entity responsible, to provide for adequate compensation for the damages suffered and to ensure that similar acts do not occur in future. The Committee requests the Government to keep it informed in this regard.

B. The Government's reply

527. In a communication dated 23 July 2013, the Government provides information sent by the judiciary concerning the allegations of delays in collective bargaining between the Supreme Electoral Tribunal and the Trade Union of Workers of Guatemala (UNSITRAGUA), and of obstacles to the exercise of the right to strike by the workers of the aforementioned tribunal. In this regard, the Government indicates that, as a result of the request submitted by the Trade Union of Workers of the Supreme Electoral Tribunal on 20 April 2009, the Fifth Court of Labour and Social Welfare declared the strike legal on 9 February 2011, but that on 23 February 2011 the Labour and Social Welfare Appeals Court overturned the ruling and ordered the dispute to be submitted to compulsory arbitration. The Government also reports that, under a ruling of the First Chamber of Labour and Social Welfare of 12 April 2013, which was implemented by the Fourth Court of Labour and Social Welfare, the collective agreement on conditions of work of the Supreme Electoral Tribunal entered into force on 8 May 2013.

528. In a communication dated 30 July 2013, the Government provides information regarding the allegations of anti-union dismissals in the municipality of El Tumbador, indicating in particular that on 14 December 2012 the courts ruled in favour of the union official, Mr Castillo Barrios. The Government also provides information on several rulings concerning the dismissal of other union officials in the municipality of El Tumbador, whose names do not appear in the allegations submitted by the complainant organization. In both the abovementioned communication and in another communication of 12 August 2013, the Government again sends information regarding aspects of the complaint already covered by the Committee in its previous reports (allegations regarding the company Chevron-Texaco and the situation of the union official, Mr Gustavo Santiesteban, who is a worker at the General Property Registry).

C. The Committee's conclusions

529. *The Committee observes that, while the Government did send certain observations, its reply remains incomplete, despite the fact that the pending allegations refer to events which took place several years ago and include serious acts of violence against union members, and acts of anti-union discrimination and interference. The Committee urges the Government to provide information on all the pending issues in the very near future.*

530. *With regard to the allegations concerning assaults, death threats and acts of intimidation against union members, as well as attacks on union headquarters, the Committee deeply regrets that, despite the seriousness of the matter, the Government has not sent observations since the last examination of the case. The Committee observes that since that examination, a complaint concerning non-observance by Guatemala of the Freedom of*

Association and Protection of the Right to Organise Convention, 1948 (No. 87), was submitted by several Workers' delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution. The Committee notes that at its March and October 2013 meetings, the Governing Body of the ILO decided, in view of the signing on 26 March 2013 of a Memorandum of Understanding between the Government of Guatemala and the Chairperson of the Workers' group of the ILO Governing Body, to defer its decision on the appointment of a Commission of Inquiry to its March 2014 session.

531. *The Committee observes that in the abovementioned Memorandum of Understanding the Government of Guatemala undertakes, among other things, to: institute independent and expeditious judicial inquiries as soon as possible to determine responsibilities and punish those who planned and carried out the murders of trade union members; and guarantee the security of workers through effective measures to protect trade union members and officials from violence and threats so that they can pursue their union activities. The Committee firmly expects that the commitments undertaken by the Government in the Memorandum of Understanding signed in March 2013 will be translated into actions and tangible results with respect to the allegations of violence and threats contained in this case, and urges the Government to refer these allegations as a matter of urgency to the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this regard.*

532. *In addition, the Committee again invites the Government to enter into contact with UNSITRAGUA with a view to providing a detailed reply regarding the case relating to the alleged raid in 2002 involving the burning of documents at the headquarters of the trade union operating at the enterprise ACRILASA.*

533. *With regard to the obstacles and significant delays to the collective bargaining process between the Supreme Electoral Tribunal and UNSITRAGUA, as well as the obstacles to the union's exercise of the right to strike, the Committee takes note of the information provided by the Government, according to which, on 23 February 2011 the Labour and Social Welfare Appeals Court overturned the ruling declaring the strike legal and ordered the dispute to be submitted to compulsory arbitration; and, under a ruling of 12 April 2013, the collective agreement on conditions of work of the Supreme Electoral Tribunal entered into force on 8 May 2013. While the Committee welcomes the entry into force of the collective agreement, it observes with regret that, according to the information provided by the judiciary, this only came about 12 years after the beginning of the aforementioned collective dispute. The Committee also notes with regret that, according to the same sources, the Court of First Instance took 22 months to rule on the legality of the strike.*

534. *The Committee recalls that, while it considers that officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions, such as its suspension or even prohibition [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 578], the prohibition or restriction of the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [see* ***Digest****, op. cit., para. 596]. The Committee therefore urges the Government to take all the necessary measures to significantly expedite the judicial procedures to determine the lawfulness of strikes and, in general, to settle collective disputes involving public officials exercising authority in the name of the State.*

535. *As regards the allegations in relation to the municipality of El Tumbador concerning the reinstatement proceedings for dismissed workers ordered by the judicial authority and the dismissal of several union officials, the Committee notes that the Government reports that under a decision of 14 December 2012, the courts ruled in favour of the union official, Mr Castillo Barrios. The Committee notes with regret, however, that the Government has not provided information in relation to the dismissal of Mr César Augusto León Reyes, Mr José Marcos Cabrera, Mr Víctor Hugo López Martínez, Mr Cornelio Cipriano Salic Orozco and Mr Romeo Rafael Bartolón Martínez. The Committee deplores these excessive delays and firmly expects that proceedings to reinstate the dismissed workers will be completed in the very near future. The Committee requests the Government to keep it informed of future rulings on this matter and to provide evidence of the reinstatement of the aforementioned workers, or, if reinstatement is not possible due to the time elapsed, the payment of adequate compensation which would constitute a sufficiently dissuasive sanction.*

536. *As regards the remaining allegations, in the absence of observations from the Government, the Committee yet again reiterates its previous recommendations, which are set out in the first part of this report, and urges the Government to send the information and take the actions requested without delay.*

The Committee's recommendations

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

(a) The Committee again regrets that the Government's reply remains incomplete, despite the fact that the pending allegations refer to events which took place several years ago and include serious acts of violence against union members, and acts of anti-union discrimination and interference. The Committee urges the Government to provide information on all the pending issues in the very near future.

(b) With regard to the allegations concerning assaults, death threats and acts of intimidation against union members, as well as attacks on union headquarters, the Committee deeply regrets that, despite the seriousness of the matter, the Government has not sent observations since the Committee's last examination of the case. The Committee firmly expects that the commitments undertaken by the Government in the Memorandum of Understanding signed in March 2013 will be translated into actions and tangible results with respect to the allegations of violence and threats contained in this case, and urges the Government to refer these allegations as a matter of urgency to the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this regard.

(c) The Committee again invites the Government to enter into contact with UNSITRAGUA with a view to providing a detailed reply regarding the case relating to the alleged raid in 2002 involving the burning of documents at the headquarters of the trade union operating at the enterprise ACRILASA.

(d) With regard to the obstacles and significant delays to the collective bargaining process between the Supreme Electoral Tribunal and UNSITRAGUA, as well as the obstacles to the union's exercise of the right to strike, the Committee urges the Government to take all the necessary

measures to significantly expedite the judicial procedures to determine the lawfulness of strikes and, in general, to settle collective disputes involving public officials exercising authority in the name of the State.

(e) As regards the allegations in relation to the municipality of El Tumbador concerning the reinstatement proceedings for dismissed workers ordered by the judicial authority and the dismissal of several union officials, the Committee notes with regret that the Government has not provided information in relation to the dismissal of Mr César Augusto León Reyes, Mr José Marcos Cabrera, Mr Víctor Hugo López Martínez, Mr Cornelio Cipriano Salic Orozco and Mr Romeo Rafael Bartolón Martínez. The Committee deplores these excessive delays and firmly expects that proceedings to reinstate the dismissed workers will be completed in the very near future. The Committee requests the Government to keep it informed of future rulings on this matter and to provide evidence of the reinstatement of the aforementioned workers, or, if reinstatement is not possible due to the time elapsed, the payment of adequate compensation which would constitute a sufficiently dissuasive sanction.

(f) As regards the remaining allegations, in the absence of observations from the Government, the Committee yet again reiterates its previous recommendations, which are reproduced below, and urges the Government to send the information and take the actions requested without delay:

- ***noting that the Government has not provided any information concerning wages owed to the union leader Mr Gramajo, the Committee urges the Government once again to take steps to ensure that all outstanding wages are paid without delay and to keep it informed in this regard; and***

- ***with regard to the allegations concerning employer interference in union elections at the General Property Registry, which was confirmed by the labour inspectorate, the Committee once again requests the Government to take the necessary measures without delay to sanction the entity responsible, to provide for adequate compensation for the damages suffered and to ensure that similar acts do not occur in future. The Committee requests the Government to keep it informed in this regard.***

CASE NO. 2913

DEFINITIVE REPORT

Complaint against the Government of Guinea presented by the International Trade Union Confederation (ITUC)

Allegations: The complainant organization denounces the armed assault on a trade union official, the attack on trade union premises and obstacles to the exercise of trade union rights, in particular the invalidation of trade union congress elections

538. The Committee last examined this case at its meeting in March 2013 and on that occasion submitted an interim report to the Governing Body [see 367th Report, approved by the Governing Body at its 317th Session (March 2013), paras 784–813].

539. The Government sent its observations in a communication dated 31 May 2013.

540. Guinea 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

541. During its previous examination of the case, in March 2013, the Committee made the following recommendations [see 367th Report, para. 813]:

(a) The Committee regrets that 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 this case. The Committee urges the Government to be more cooperative in the future.

(b) The Committee urges the Government to indicate the results of any inquiry conducted further to the complaint against persons unknown for the attempted murder of the general secretary of the CNTG and to indicate the outcome of the complaint lodged following the attack on the headquarters of the organization.

(c) The Committee urges the Government to send information on any judicial or other action taken to follow up on the decision of the labour tribunal concerning the dispute within the CNTG.

(d) The Committee expects that the Government will maintain an attitude of complete neutrality with regard to internal disputes within a trade union organization until such time as they are settled through mediation or by the competent judicial authority.

B. The Government's response

542. In a communication dated 31 May 2013, the Government states that it has understood the seriousness of the situation described by the complainant organization and reports on the measures taken to deal with it.

543. The Government states that, following the complaint against persons unknown for attempted murder, filed by the General Secretary of the National Confederation of Workers of Guinea (CNTG), Mr Amadou Diallo, inquiries have been conducted by the police and judicial authorities. In the meantime, Mr Diallo and his family have been provided with enhanced protection, pending the outcome of the inquiries.

544. Furthermore, as regards the Labour Exchange, which is at the CNTG's headquarters, the Government states that it has taken the necessary measures to secure access for union officials and workers.

545. Finally, the Government states that the labour tribunal judgment of 16 December 2011, which invalidated the two CNTG congress elections, has been annulled by the Supreme Court, and that, in order to return to constitutional order in the country, it has undertaken a series of reforms to equip the country with a permanent framework for dialogue. To this end, the Government indicates that it will focus on the dialogue it is conducting with the national employers' and workers' organizations, in particular the CNTG, led by its General Secretary, Mr Amadou Diallo.

C. The Committee's conclusions

546. *The Committee recalls that this case, which results from a complaint by the International Trade Union Confederation (ITUC), relates to serious obstacles to the exercise of the CNTG's activities, in particular the invalidation of an election held at the end of its 16th Congress, the attempted murder of its General Secretary and the attack on its premises.*

547. *The Committee notes the information provided by the Government on the measures taken concerning the obstacles to the exercise of trade union rights. The Committee recalls that the CNTG held its 16th Congress on 24 September 2011 in the presence of observers from regional and national trade union organizations, and elected a team of officials under the leadership of a general secretary, Mr Amadou Diallo. All the observers confirmed that the Congress ran smoothly. The outcome of the statutory congress was, however, challenged by a group of dissidents which called another congress and brought the case before the courts. In a judgement handed down on 11 December 2011, the labour tribunal to which the case was referred decided to invalidate the two congress elections. The decision therefore brought the CNTG's activities to a standstill. The Committee notes the Government's statement that the labour tribunal's judgment was annulled by the Supreme Court and understands from the Government's statement that the Government now recognizes the officers elected by the statutory congress, under the leadership of Mr Amadou Diallo, as the CNTG's lawful representatives. The Committee welcomes this information.*

548. *Moreover, the Committee had noted with great concern the attack by armed individuals on Mr Diallo's home, on 8 October 2011, during which Mr Diallo was seriously injured. The Committee had also noted with serious concern the attack on the CNTG's headquarters, on 17 October 2011, by armed assailants who wounded seven people and caused considerable damage to property. The Committee notes the Government's statement according to which, following the complaint against persons unknown for attempted murder, filed by Mr Amadou Diallo, inquiries were conducted by the police and justice authorities, and Mr Diallo and his family have been provided with enhanced protection, pending the outcome of the inquiries. Furthermore, the Committee notes that the Government states that it has taken the necessary measures to secure access to the Labour Exchange, which is at the CNTG's headquarters, for union officials and workers. Taking into account the information provided by the Government, the Committee requests the Government to furnish details of the outcome of the inquiries conducted into the attempted*

murder of the CNTG's General Secretary, Mr Amadou Diallo, and into the attack on the organization's headquarters.

The Committee's recommendation

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

The Committee requests the Government to provide details of the outcome of the inquiries conducted into the attempted murder of the General Secretary of the (CNTG), Mr Amadou Diallo, and into the attack on the organization's headquarters.

CASE NO. 2508

INTERIM REPORT

Complaint against the Government of the Islamic Republic of Iran presented by
– the International Trade Union Confederation (ITUC) and
– the International Transport Workers' Federation (ITF)

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

550. The Committee has already examined the substance of this case on seven occasions, most recently at its June 2013 meeting, when it presented an interim report to the Governing Body [368th Report, paras 567–583, approved by the Governing Body at its 318th Session (June 2012)].

551. The Government sent its observations in a communication dated 13 October 2013.

552. The complainants submitted new allegations in a communication dated 12 February 2014.

553. The Islamic Republic of Iran has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

554. At its June 2013 meeting, the Committee made the following recommendations [see 368th Report, para. 583]:

(a) As regards the allegations of ill-treatment to which Mr Ebrahim Madadi, Vice-President of the SVATH, has been subjected while in detention, while taking note of the information provided by the Government indicating that Mr Madadi would be entitled to seek a variety of existing legal and judicial means and channels to sue any such allegations, but that no such file has yet been registered with the public court of law, the Committee once again urges the Government to institute without delay an independent investigation into these serious allegations and, if they are found to be true, to compensate him accordingly.

(b) With respect to Mr Reza Shahabi, Treasurer of the Syndicate of Workers of Tehran and Suburbs Bus Company, the Committee understands that he was temporarily released from prison in January 2013 to receive medical treatment, but he is currently back in prison. The Committee calls on the Government to secure his parole, pardon and immediate release from prison and the dropping of any remaining charges. The Committee firmly expects that Mr Shahabi will have his rights restored and that he will be compensated for the damage suffered. It requests the Government to carry out the necessary independent investigation into the serious allegations of ill-treatment to which he has been subjected while in detention, and, if they are found to be true, to compensate Mr Shahabi accordingly. The Committee requests the Government to keep it informed in this regard.

(c) With regard to the Labour Law reform, the Committee once again requests the Government to specify the social partners which took part in this process and to clarify the actual status of the labour law. It urges the Government to provide a copy of this text.

(d) Noting that the Government does not provide any indication in relation to the de facto recognition of the SVATH, the Committee once again urges it to ensure such recognition, pending the implementation of the legislative reforms, and to transmit a detailed report of the findings of the SGIO and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005. It once again requests the Government, in light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities. The Committee requests the Government to keep it informed in this regard, as well as to provide a copy of the court's judgment on the action initiated by the union concerning the attacks on union meetings in May and June 2005, once it is handed down.

(e) The Committee also once again requests the Government to provide a copy of the Code of Practice on the Administration of Labour Demonstrations and Assemblies.

(f) The Committee calls the Governing Body's special attention to the extremely serious and urgent nature of this case.

B. The complainants' new allegations

555. In their communication dated 12 February 2014, the complainants recall that Mr Reza Shahabi has been in custody since June 2010 and is serving a six-year prison sentence. The complainants allege that, as a result of the brutal treatment he received when he was arrested in 2010, beatings and torture during interrogations and denial of medical treatment, Mr Shahabi is suffering from a number of reported health problems. These include liver and kidney dysfunction, severe pain in his back, and a loss of sensation in his left leg, which limits his ability to move, wash himself or even go to the toilet without help from others. In August 2012, Mr Shahabi received an operation on his spine; however, contrary to doctors' recommendations, he was sent back to prison. A subsequent examination by a state medical examiner officially declared that the discs in three

vertebrae of his spine were destroyed and that he should be immediately hospitalized and operated on. In October 2013, Mr Shahabi was examined by specialists at the Imam Khomeini hospital, who prescribed immediate physiotherapy and hydrotherapy outside prison. According to the complainants, the doctors emphasized that without this treatment, severe physical disorders, including loss of sensation and disability in the left part of his body, were probable. The complainants call for Mr Shahabi's immediate and unconditional release from prison and request the Iranian authorities to ensure that he is provided with the proper medical attention he requires.

C. The Government's reply

556. In its communication dated 13 October 2013, the Government reaffirms its commitment to the implementation of fundamental principles and rights at work, tripartism and social dialogue. The Government also indicates that its new initiatives are aimed at settling the cases pending before the Committee. Recalling the importance of the Committee's recommendations, the Government reiterates its full preparedness to cooperate with the International Labour Standards Department.

557. Concerning the above recommendations (a) and (b), the Government submits that the Minister of Cooperatives, Labour and Social Welfare has repeatedly urged the judiciary to do its utmost to seek the parole and pardon or to shorten the prison term of Mr Reza Shahabi to the shortest possible. The Government indicates that it fervently continues to seek his release in the shortest time possible. In respect of the allegations of ill-treatment to which Mr Ebrahim Madadi and Mr Reza Shahabi have been subjected while in detention, the Government indicates that in June 2013, it has communicated the Committee's request to the Senior Adviser of the Chief of the Judiciary and the High Council for Human Rights. In July 2013, it wrote to the Ministry of Justice, seeking an independent investigation of the cases and information thereon. The Government states that despite its earnest and genuine intention to positively comment on these allegations as soon as possible, it has to wait for the report of the judiciary. The Government affirms that it has not spared any effort in reminding the judiciary of the importance of the fundamental principles and rights at work and the need for the protection of freedom of association. The Government assures the Committee that it will continue to do its utmost to genuinely address its concerns, including obtaining a fair and final pardon of Mr Reza Shahabi. The Government is optimistic that its sincere efforts may bear fruit in the near future as the new Government is categorically against any form of detention of the social and trade union activists.

558. In reply to recommendation (c), the Government forwards a copy of the draft amendments to the Labour Law which were submitted to Parliament on 2 December 2012. The Government explains that the text of the proposed amendments is being meticulously examined by various special committees of Parliament. Upon their final examination, the proposed bill will be submitted to Parliament for final approval. The Government also indicates that the draft amendments are the fruit of long and laborious consultations initiated by the Ministry of Cooperatives, Labour and Social Welfare, the Iranian Confederation of Employers' Associations and the three most representative workers' confederations, including the Confederation of Workers' Trade Unions, the High Council of Workers' Representatives and the Confederation of the Islamic Labour Councils. The results of the social partners' deliberations are duly incorporated in the proposed amendments. The Government requests the Committee, in the context of ILO technical cooperation, to make its comments on the draft so as to ensure that it is in full compliance with the respective ILO instruments.

559. With regard to recommendation (d), the Government indicates that as per the Labour Law, all workers' and employers' organizations are requested to freely and without constraint register their associations with the Ministry of Labour to help the Government to fulfil its

reporting obligations toward the ILO and other pertinent international organizations. According to the Government, once the members of the Syndicate of Tehran and Suburbs Bus Company submit their registration request together with the by-laws of their association to the Department General of Cooperatives, Labour and Social Welfare of Tehran Province, the request will be duly processed in line with the provision of Chapter VI of the Labour Law. The Government indicates that so far, no such action has been taken in this regard by the syndicate.

560. According to the Government, the Labour Law provides that the Tehran Vahed Bus Company (SVATH) union, as an alleged trade union, can exercise its de facto and de jure right to freely embrace the membership of the Confederation of Iranian Workers' Trade Unions. Since its coming into being, the latter has provided wide opportunities for trade unions' activists of all walks of trade to enter into collective bargaining with both the government and major enterprises over the protection of trade union rights of its members. The Government further indicates that the Suburban Drivers' Association, as a member of the above Confederation, has succeeded in taking some giant steps for the protection of the rights of professional drivers all over the Islamic Republic of Iran. Reportedly, the Confederation of Workers' Trade Unions has attempted twice to invite the SVATH union to examine the possibility of affiliation.

561. The Government reiterates, as regards the clashes of 2005, that its officials were not in any manner involved in the incidents. It states that due to the separation of powers, it may not reasonably intervene or take sides in trade union disputes or urge the judiciary to abrogate their rulings and decisions. The Government indicates that the 2005 labour dispute between the two contending parties shall be heard on its merits by the competent court.

562. Concerning the allegations of barring workers to freely form their associations or exercise their trade union rights, the Government indicates that, according to the Labour Law, no employer is allowed to threaten trade union activists for their legal representation or unilaterally and prematurely terminate their employment contracts. In such cases, upon receiving a worker's complaint, the Labour Inspection Office of the Ministry of Cooperatives, Labour and Social Welfare will conduct a thorough and immediate investigation and refer the offender to the legal authority.

563. In reply to recommendation (e), the Government submits a copy of the by-law on Managing and Organizing Labour Demands (dealing with demonstrations and assemblies) adopted by the National Security Council on 11 July 2011. It further indicates that it welcomes the possibility of an ILO technical cooperation for the training of its disciplinary forces for the proper management of labour protests.

D. The Committee's conclusions

564. *The Committee recalls that this case, initially filed in July 2006, concerns acts of repression against the local trade union at the bus company, including: harassment of trade unionists and activists; violent attacks on the union's founding meeting; the violent disbanding, on two occasions, of the union general assembly; and the arrest and detention of large numbers of trade union members and leaders under false pretences (disturbing public order, illegal trade union activities).*

565. *The Committee notes the information provided by the Government on its efforts to address the Committee's recommendations (a) and (b). It notes, in particular, the indication that the Minister of Cooperatives, Labour and Social Welfare has repeatedly urged the judiciary to do its utmost to seek the parole and pardon or to shorten the prison term of Mr Reza Shahabi to the shortest possible. In respect of the allegations of ill-treatment to which Mr Ebrahim Madadi and Mr Reza Shahabi have been subjected while in detention,*

the Government indicates that in June and July 2013, it has communicated the Committee's request to the Senior Adviser of the Chief of the Judiciary, the High Council for Human Rights and the Ministry of Justice, seeking an independent investigation of the cases and information thereon. The Government states that, despite its earnest and genuine intention to comment positively on these allegations as soon as possible, it has to wait for the report of the judiciary. The Government assures the Committee that it will continue to do its utmost to genuinely address its concerns, including obtaining a fair and final pardon of Mr Reza Shahabi. The Committee notes the Government's hope that its efforts may bear fruit in the near future, and welcomes the indication that the new Government is categorically against any form of detention of the social and trade union activists. Recalling that the membership of a State in the International Labour Organization carries with it the obligation to respect in national legislation and practice freedom of association principles, and that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government, the Committee expects that the Government will be able to report without further delay on the outcome of independent investigations into the allegations of ill-treatment to which Mr Ebrahim Madadi, Vice-President of the SVATH union, and Mr Reza Shahabi, Treasurer of the Syndicate of Workers of Tehran and Suburbs Bus Company, have been subjected to while in detention. The Committee further expects that if these allegations are found to be true, both union leaders will be compensated accordingly. The Committee notes the ITUC and ITF allegations submitted in a communication dated 12 February 2014 and expresses its deep concern over the poor health of Mr Shahabi and his ongoing imprisonment without access to the medical treatments he requires. The Committee therefore urges the Government to secure without further delay Mr Shahabi's parole, pardon and immediate release from prison, the dropping of any remaining charges, as well as the restoration of his rights and the payment of compensation for the damage suffered. The Committee requests the Government to keep it informed in this regard.

566. *With regard to the registration of the SVATH union, the Committee notes that on the one hand, the Government indicates that as per the Labour Law, all workers' and employers' organizations are requested to freely and without constraint register their associations and that once the members of the SVATH union submit their registration request together with the by-laws of their association to the Department General of Cooperatives, Labour and Social Welfare of Tehran Province, this request will be duly processed in line with the provision of Chapter VI of the Labour Law. On the other hand, the Government explains that, pursuant to the Labour Law, the SVATH union, as an "alleged trade union", can exercise its de facto and de jure right to freely embrace the membership of the Confederation of Iranian Workers' Trade Unions, but has so far declined to do so. The Committee recalls that one of the issues raised in this case is the issue of organizational monopoly enshrined in the current Labour Law and that registration of organizations outside the existing structures is impossible. The Committee notes the draft amendments to the Labour Law and the information provided by the Government thereon. The Committee examines the draft amendments in the framework of Case No. 2807 below (see paras 570–579). Pending the implementation of the legislative reforms, the Committee urges the Government to indicate the concrete measures taken to ensure the de facto recognition of the SVATH union, irrespective of its non-affiliation to the Confederation of Iranian Workers' Trade Unions.*

567. *The Committee regrets that, as regards the events of 2005, the Government merely reiterates that its officials were not in any manner involved in the incidents. It states that due to the separation of powers, it may not intervene or take side in trade union disputes or urge the judiciary to abrogate their rulings and decisions. The Government further indicates that the 2005 labour dispute between the two contending parties shall be heard on its merits by the competent court. In the absence of any new information, the Committee is bound to reiterate its previous request for a detailed report of the findings of the State*

General Inspection Organization (SGIO) and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005. It once again requests the Government, in light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities. The Committee requests the Government to keep it informed in this regard, as well as to provide a copy of the court's judgment on the action initiated by the union concerning the attacks on union meetings in May and June 2005, once it is handed down.

568. *The Committee takes note of the by-law on Managing and Organizing Labour Demands (dealing with demonstrations and assemblies) adopted by the National Security Council on 11 July 2011 and welcomes the Government's request for an ILO technical cooperation for the training of its disciplinary forces for the proper management of labour protests. The Committee expects that the Government will engage with the Office in this respect without delay and requests it to keep it informed on the progress made in this regard.*

The Committee's recommendations

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

(a) The Committee expects that the Government will be able to report without further delay on the outcome of independent investigations into the allegations of ill-treatment to which Mr Ebrahim Madadi, Vice-President of the SVATH union, and Mr Reza Shahabi, Treasurer of the Syndicate of Workers of Tehran and Suburbs Bus Company, have been subjected to while in detention. The Committee further expects that if these allegations are found to be true, both union leaders will be compensated accordingly. Finally, encouraged by the new Government's stance against the detention of social and trade union activists, the Committee urges the Government to secure without further delay Mr Shahabi's parole, pardon and immediate release from prison, the dropping of any remaining charges, as well as the restoration of his rights and the payment of compensation for the damage suffered. The Committee requests the Government to keep it informed in this regard.

(b) Pending the implementation of the legislative reforms, the Committee urges the Government to indicate the concrete measures taken in relation to the de facto recognition of the SVATH union, irrespective of its non-affiliation to the Confederation of Iranian Workers' Trade Unions.

(c) The Committee once again requests the Government to provide a detailed report of the findings of the SGIO and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005. It once again requests the Government, in light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities. The Committee requests the Government to keep it informed in this regard, as well as to provide a copy of the court's judgment on the action initiated by

the union concerning the attacks on union meetings in May and June 2005, once it is handed down.

(d) The Committee welcomes the Government's request for an ILO technical cooperation for the training of its disciplinary forces for the proper management of labour protests and expects that the Government will engage with the Office in this respect without delay. It requests the Government to keep it informed on the progress made in this regard.

(e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

CASE NO. 2807

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

Complaint against the Government of the Islamic Republic of Iran presented by the International Trade Union Confederation (ITUC)

Allegations: The complainant alleges that the accreditation of the Coordinating Center of Workers' Representatives (CCR) as the workers' delegation of the Islamic Republic of Iran to the International Labour Conference is inconsistent with the requirements of the ILO Constitution, as the organization is unknown to the complainant and to independent workers' groups within the country

570. 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 1089–1100, approved by the Governing Body at its 316th Session (November 2012)].

571. By a communication dated 13 October 2013, the Government forwarded a copy of the proposed amendments to the Labour Code and a copy of the by-laws concerning the formation, scope of duties, powers and the manner of function of trade unions and relevant societies.

572. The Islamic Republic of Iran 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. Previous examination of the case

573. In its previous examination of the case, the Committee made the following recommendations [see 365th Report, para. 1100]:

(a) The Committee expects that the proposed draft amendments to the Labour Law will be in full conformity with the principles of freedom of association and would allow for trade union pluralism and strongly urges the Government to transmit a copy thereof without delay so that it may examine their conformity with freedom of association principles.

(b) The Committee regrets that the Government has not provided a copy of the amended Code of Practice on the Formation, Scope of Duties, Authorities and Method of Performance of Trade Unions and Related Associations, despite its previous request, and urges the Government to do so without delay.

B. The Committee's conclusions

574. *The Committee recalls that this case, referred to it by the International Labour Conference in June 2010 upon a proposal of the Credentials Committee, concerns the issue of organizational monopoly imposed by the legislation and genuine representation of workers in practice. In particular, the Committee recalls that on several occasions it has requested the Government to amend article 131 of the Labour Law (1990), enshrining organizational monopoly, so as to ensure that the legislation allows for trade union pluralism. The Committee notes that in the framework of Case No. 2508, the Government forwards a copy of the draft amendments to the Labour Law which were submitted to Parliament on 2 December 2012. The Government explains that the text of the proposed amendments is being meticulously examined by various special committees of Parliament. Upon their final examination, the proposed bill will be submitted to Parliament for final approval. The Government also indicates that the draft amendments are the fruit of long and laborious consultations initiated by the Ministry of Cooperatives, Labour and Social Welfare, the Iranian Confederation of Employers' Associations and the three most representatives workers' confederations, including the Confederation of Workers' Trade Unions, the High Council of Workers' Representatives and the Confederation of the Islamic Labour Councils. The results of the social partners' deliberations are duly incorporated in the proposed amendments. The Government requests the Committee, in the context of ILO technical cooperation, to make its comments on the draft so as to ensure that it is in full compliance with the respective ILO instruments.*

575. *With regard to the draft amendments to the Labour Law, the Committee notes that, while section 131 would appear to promote workplace pluralism, as previously requested by the Committee, its accompanying Note 3 refers to a singular higher level organization of workers, namely the Confederation of the Workers' Trade Union. The Committee further notes that, according to the proposed wording of section 135, the establishment of Islamic labour councils comprising representatives of workers, employers and representatives of management is mandatory in work units with more than 35 employees. It is not clear, however, how such councils will interact with workers' trade unions active at the same unit.*

576. *The Committee further notes a copy of the by-laws concerning the formation, scope of duties, powers and the manner of function of trade unions and relevant societies (2006), adopted pursuant to section 131 of the Labour Law in force, section 15 of which currently provides that "it is not permissible to register two similar organizations in one trade or industry in a common geographical area". The Committee understands, however, that once the new amendments to the Labour Law are adopted, these by-laws will also be modified. It requests the Government to take the necessary steps without delay and to keep it informed in this regard.*

577. *Indeed, the Committee notes that several sections of the proposed amendments to the Labour Law refer to regulations which would need to be prepared by the High Labour Council and approved by the Minister of Cooperatives, Labour and Social Welfare or the*

Council of Ministers, as the case may be, which would regulate in detail such subject matters as: the manner of formation, scope of duties and powers and performance of workers' and employers' organizations and confederations, election, formation, scope of duties and powers of workers' representatives in workshops and the relevant assemblies, as well as election of representatives of employers and workers in domestic and international assemblies (pursuant to section 131, Note 5, of the Labour Law); supervision of activities and investigation of infringements by workers' and employers' organizations and by the board of director members or inspectors (pursuant to section 131, Note 6, of the Labour Law); establishment of the Islamic Labour Council (pursuant to section 135 of the Labour Law); the right to protest (pursuant to section 142bis of the Labour Law); establishment of and procedures relating to conciliation councils (pursuant to section 164 of the Labour Law), etc. It therefore appears that various components of freedom of association will be regulated through additional specific by-laws. It is thus not clear, at the present stage, to what extent the Labour Law and the accompanying regulations will guarantee, in law and in practice, the right of workers to come together and form organizations of their own choosing, independently and with structures which permit their members to elect their own officers, draw up and adopt their by-laws, organize their administration and activities and formulate their programmes in the defence of workers' interests without interference from the public authorities.

578. *The Committee welcomes the Government's indicated intention to ensure that the amended Labour Law is in conformity with the relevant ILO instruments and considers that ILO technical assistance in this respect could help the Government and its social partners in this endeavour. It therefore encourages the Government to accept the technical assistance of the Office and expects that the legislation and accompanying regulations will be effectively amended without delay so as to bring them into full conformity with the principles of freedom of association and will allow for trade union pluralism at all levels. It requests the Government to keep it informed of the status of the labour law reform.*

The Committee's recommendation

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

The Committee encourages the Government to accept technical assistance of the Office and expects that the legislation and accompanying regulations will be effectively amended without delay so as to bring them into full conformity with the principles of freedom of association and will allow for trade union pluralism at all levels. It requests the Government to keep it informed of the status of the labour law reform.

CASE NO. 2953

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

Complaint against the Government of Italy presented by the Italian General Confederation of Labour (CGIL)

Allegations: The complainant organization denounces the violation, within the FIAT Group, of the right to have enterprise-level trade union representatives, acts of anti-union discrimination, including the refusal to hire unionized employees and the dismissal of trade union officials, and the lack of government action in response to these violations

580. The complaint is contained in a communication by the Italian General Confederation of Labour (CGIL) dated 31 May 2012.

581. The Government sent its observations in communications dated 15 October 2012, and 5 August and 18 September 2013.

582. Italy 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

583. In a communication dated 31 May 2012, the CGIL alleges that the Government violated ILO Conventions Nos 87, 98 and 135, as it has not adequately addressed the violation of these conventions by the FIAT Group (which, since 1 January 2011, is FIAT SpA and FIAT Industrial, hereafter "the Group") against its affiliate, the Federazione Impiegati Operai Metallurgici (FIOM–CGIL). In particular, the CGIL alleges violations of: (1) the right of all workers to join organizations of their own choosing without prejudice, as to date no worker affiliated to the FIOM–CGIL has been hired by the Pomigliano d'Arco plant; (2) to freely choose the union they wish to be represented by; and (3) the right of the FIOM–CGIL to establish plant trade union facilities and have trade union representatives in the workplace, a violation stemming from an interpretation of article 19 of the *Statuto dei Lavoratori* of 1970 (the Workers' Statute) aimed at preventing the FIOM–CGIL from having trade union representatives in the company.

584. The CGIL indicates that the FIOM–CGIL is the most representative union in the metalworking industry as it meets all the standards established by Italy's legislation and jurisprudence: the size of its membership, the number of votes at the company level (rappresentanza sindacale unitaria (RSU)) elections, presence throughout the country, being a party to national industry collective agreements and to agreements with the largest Italian metalworkers' companies, member of the most representative national trade union confederations, affiliated to international metalworkers' union federations. The complainant adds that the FIOM–CGIL is considered one of the most representative unions also according to criteria established in the context of European Union social dialogue.

585. The complainant provides information in relation to the FIOM–CGIL's representativeness in the Group: (1) the FIOM–CGIL has been part of the various bodies and types of trade union representation which developed over time as part of industrial relations in Italy, from shop-level committees (commissioni interne), to trade union industry branches (sezioni aziendali sindacali), workers' councils (Consigli di Fabbrica) and the RSU; (2) following the entry into force of the Workers' Statute in 1970, the FIOM–CGIL has always had company union representatives and has always exercised trade union prerogatives afforded by the law as the most representative trade union; and (3) the FIOM–CGIL signed all the company collective agreements the Group signed in the past 40 years; the FIOM–CGIL's presence as a trade union is underscored by its membership and trade union activities in all the plants of the group.

586. The complainant describes at length the situation that started at the Pomigliano d'Arco (Naples) plant and then extended to the rest of the Group and which can be summarized as follows:

(i) Following the announcement by the company in late 2009, of an investment plan for the Italian plants of the Group, known as Fabbrica Italia, a meeting was held on 9 April 2010 between the Group, the national secretariats of the three most representative metalworkers' unions (FIOM–CGIL, Federazione Italiana Metalmeccanici–Confederazione Italiana Sindacati Lavoratori (FIM–CISL) and Unione Italiana Lavoratori Metalmeccanicie Industria–Unione Italiana del Lavoro (UILM–UIL)) and the company union Federazione Italiana Sindacati Metalmeccanici e Industrie Collegate (FISMIC), as well as the RSU members of the Pomigliano d'Arco (Naples) plant. According to the complainant, while the other trade unions stated their availability to open negotiations with the Group on the basis of the Group's requests, the FIOM–CGIL asked for negotiations to continue involving all the workers as the company's demands were extremely penalizing for the workers, although it considered plant investment plans positively. On 27 April 2010, the Group gave unilateral notice of cancellation of all collective agreements still in force at that time as from 1 January 2011, because they considered them incompatible with the Fabbrica Italia plan. The FIOM–CGIL circulated a statement voicing its disagreement with the Group's demands, especially those referring to working hours and the ensuing risks for workers' health.

(ii) In May 2010, several negotiation meetings between the Group and all the unions took place, where the FIOM–CGIL stated its willingness to negotiate in the framework of the law and of the National Collective Agreement for the metalworkers' industry on all the aspects of the new organization, for example, the increase in the number of shifts.

(iii) On 11 June 2010, the FIOM–CGIL stated that it was not prepared to sign the preliminary agreement presented by the Group as it disagreed with introducing worse conditions by way of derogation of better conditions stated in the National Collective Agreement for the metalworkers' industry and in the law, with special reference to the disciplinary sanctions the Group could adopt against workers in the event of their joining in strikes on working conditions, thus burdening the individual workers with the responsibilities which befall trade union organizations.

(iv) On 15 June 2010, the Group called the trade unions to the negotiating table, with the exception of the FIOM–CGIL, and the preliminary agreement submitted by the Group was signed. The unions that had signed the agreement called a referendum.

(v) In the referendum held on 22 June 2010 among the workers of the Pomigliano d'Arco plant, 4,642 workers out of 4,881 took part, 63.3 per cent voted in favour of the preliminary agreement and 1,673 voted against (nearly 37 per cent).

(vi) The FIOM–CGIL stated its intention to continue negotiations with the Group to seek an agreement which, however, would not question the National Collective Agreement. The complainant adds that, according to the Italian law, a collective agreement cannot be forcibly implemented on all the workers unless they express their acceptance, whether directly or through the unions they are members of, which meant that the Group could not implement the derogations set by the new company collective agreement to the FIOM–CGIL members.

(vii) In October 2010, the Group announced its intention to establish new companies which would replace the existing ones and added that they would not register these new companies with the Italian Association of Metalwork Companies (FEDERMECCANICA), affiliated to the employers' national organization CONFINDUSTRIA, so as not to be bound by any existing collective agreement signed by the FIOM–CGIL and prevent it, in application of article 19 of the Workers' Statute, from having trade union representatives in the company.

(viii) On 23 December 2010, an agreement was signed for a second plant of the Group (Mirafiori in Turin) where a specific first-level (plant) collective agreement would be put in place by the FIAT Chrysler Joint Venture which would not join the CONFINDUSTRIA. A referendum was also carried out among all the workers and, compared to Pomigliano, a larger percentage (43 per cent) of workers voted against the agreement; if only the shop floor (blue collar) workers who were those mostly affected by the new regulations were taken into account, there would have been a majority against the agreement.

(ix) On 29 December 2010, the FIAT Plant (level 1) Agreement was signed and became the only collective agreement applicable to the Group. The agreement was not signed by the FIOM–CGIL.

(x) On 16 June 2011, the Group initiated procedures to cease all the old company's activities and started hiring workers under the new company.

(xi) On 28 June 2011, the CGIL, CISL and UIL signed a national agreement with CONFINDUSTRIA.

(xii) On 30 June 2011, the Group communicated its decision to leave CONFINDUSTRIA as from 1 January 2012. The main aim of this decision was to avoid implementing in all the plants of the Group the important new inter-confederation agreement.

(xiii) On 21 November 2011, the Group announced the cancellation of all collective agreements signed with trade unions from 1 January 2012, arguing that they were not compatible with the company's plan to relaunch production.

(xiv) On 13 December 2011, the Group signed a collective agreement with the FIM–CISL, UILM–UIL, FISMIC and UGL Metalmeccanici trade unions. Such agreement holds for all the companies of the Group and is called a company or level 1 contract. In the section on trade union rights, the agreement states that they come under provisions of Law 300/1970 and that the company trade union representatives shall be recognized according to article 19 of the Law and thus applies only to the trade unions that have signed the FIAT collective agreement.

(xv) In January 2012, the CGIL National General Council took a stand against the Group's choice to wipe out the National Collective Agreement and the history of collective bargaining in the Group and thus unlawfully keeping the most representative union outside the workplace.

587. According to the complainant, both Law 300/1970 and the initiatives taken by the Group infringe the right to collective bargaining. According to article 19 of Law 300/1970, the trade unions that sign the collective agreement which applies to a given productive unit have the right to establish company trade union representatives. In 1995, the original provision of article 19 regarding the right to establish company trade union representatives was amended by a referendum that abolished the requirement to be affiliated to the most representative national trade union confederations. The aim of the amendment to the Law was to enable more unions to have company representatives and not to exclude a very representative trade union (such as the FIOM–CGIL). The complainant alleges that the Group chose to interpret the provision literally, in contrast with the principles of freedom of association enshrined in the Italian Constitution, with the aim of expelling from the company the union representatives of the most representative trade union in the metalwork industry, merely because it had exercised the right to dissent which is the strongest expression of freedom of association upheld by ILO Conventions.

588. The complainant considers that the Group has abused the freedom of collective bargaining, both by choosing which unions it would sign the agreement with, and by discriminating against the FIOM–CGIL by denying its right to have union representatives, subordinating it to the signature of a company agreement.

589. The complainant also denounces the effects of the lack of company trade union representatives, in particular that in all its plants and branches FIOM–CGIL representatives no longer enjoyed adequate protection against the dismissal of its representatives compared to the representatives of other much less representative trade union organizations. Unlike other less representative trade unions, the FIOM–CGIL's representatives no longer benefit from union leave, cannot convene a meeting or a referendum, or receive information in the event of crisis or reorganization, or be consulted in the event of the company being moved.

590. According to the complainant, the Group is in addition: refusing to withhold FIOM–CGIL union dues from wages; infringing the FIOM–CGIL's right to take part in the establishment of the European Works Council (EWC) of the two enterprises that constitute the Group.

591. The complainant also denounces the Group's indirect discrimination through intimidation against FIOM–CGIL members and union shop stewards. Soon after signing the first plant agreement in Pomigliano d'Arco, a number of spontaneous (wildcat) strikes broke out in several plants of the Group, caused by working conditions but fuelled by the climate in the company at the time. In the Melfi plant, with the purpose of intimidation, the Group dismissed three FIOM–CGIL shop stewards: the three had stood up to management in defence of striking workers. In spite of an Italian court ordering the reinstatement of the three shop stewards, the Group refuses to employ them.

592. In the new company Pomigliano d'Arco plant, where all the employees from the old Group's company are being re-employed, to date the re-employment of 2,100 of the 4,367 former employees does not include one single FIOM–CGIL member. The behaviour of the company led to a drastic reduction of FIOM–CGIL membership: dozens of workers cancelled their membership for fear of discrimination. According to the complainant, by allowing the Group to treat the various trade union organizations differently, exclusively on the basis of the decision to sign a collective agreement or not, the Italian Government is in violation of Article 2 of Convention No. 87, such as the right of a worker to join a trade union of his or her own choosing, subject only to the rules of the organization. The Italian Government is also in violation of Article 2 of Convention No. 135 because so far it has failed to take any measures against the Group's behaviour, that is against the fact that the Group has prevented the FIOM–CGIL from establishing union representatives according to the law of the land (article 19, Law 300/1970), thus denying the most representative

union of the metalwork industry and of the company to exercise its rights and privileges which are granted to far less representative unions (these rights and prerogatives include the right of officials and leaders which establish company union representatives to access the workplace during meetings). Since the Group denies the FIOM–CGIL the right to have company trade union representatives, it also denies FIOM–CGIL officials and leaders the right to enter the Group's plants.

593. In conclusion, the complainant considers that, in practice, the Italian Government has allowed the Group to violate the union rights of the FIOM–CGIL and of its members, especially the right to have company trade union representatives and to exercise all the rights that the Italian legislation grants to such representatives. Furthermore, in spite of repeated requests by the CGIL, the Government has not clarified how the Italian legislation on company union representatives and collective agreements should be applied, giving rise to many diverse and even contrasting rulings by the courts. This has led to an untenable uncertainty on the rights of the FIOM–CGIL and its members.

B. The Government's reply

594. In its communication dated 15 October 2012, the Government points out that article 39 of the Italian Constitution recognizes the (positive or negative) freedom of each worker and employer to establish trade unions within the same occupational category or productive sector, as well as the freedom of individuals to choose the trade union that they wish to join, and indeed not to join any trade union; such freedom can be invoked both against the authorities, who shall not intervene in any way in the organization of a trade union, and against employers who, under article 15 of the Workers' Statute, shall not subordinate the employment, dismissal or transfer of a worker to the condition that they belong or do not belong to a particular trade union, or to the fact that they join or cease to be a member of that trade union.

595. The Government adds that this constitutional protection is given effect through Titles II and III of the Workers' Statute, which protect the freedom and dignity of workers, and guarantee to the unions, referred to in article 19 of the Statute, the free exercise of freedom of association at the workplace. More specifically, article 19, as amended by Decree of the President of the Republic No. 312 of 28 July 1995, provides that:

> Enterprise-level trade union representation may be instituted on the workers' initiative in every production unit:
>
> (a) ... ;
>
> (b) within the ambit of the trade unions who are signatories to collective agreements applicable within the production unit in question.
>
> In enterprises that consist of several production units, trade union representatives may establish coordination bodies.

596. In this connection, the Government emphasizes that the new version of article 19 was adopted following the referendum of 11 June 1995, through which the population expressed its wish to abrogate certain parts of the original text (abrogation of paragraph (a)) and to amend paragraph (b). In practical terms, these modifications took the form of abandoning the principle of "most representative at national level" and removing the provision whereby only confederations were recognized as having the necessary representativity to institute enterprise-level trade union representation; hence, such recognition was extended to trade unions that do not meet this criterion but which are signatories to collective agreements applicable to the production unit.

597. The Government indicates that, in the case under consideration, the current wording of article 19 means that the right to establish enterprise-level trade union representation (and the exercise of the rights derived therefrom) is recognized only for trade unions that have endorsed or acceded to the level 1 enterprise agreement of 13 December 2011 that has applied to the whole of the Group since 1 January 2012, replacing the national collective agreement for the metalworking and mechanical engineering sector applicable to enterprises that are affiliated to CONFINDUSTRIA. The Group has not been affiliated to that body since 1 January 2012. The ban on the FIOM–CGIL instituting enterprise-level trade union representation in the Group's production units accordingly derives from application of paragraph (b), since this trade union has neither endorsed nor acceded to the level 1 enterprise agreement of 13 December 2011. The Government nonetheless believes it is worth noting that, also under the provisions of article 19, the FIOM–CGIL would not be entitled to take part in elections to, and establishment of, enterprise-level trade union representative bodies even if the Group were still affiliated to CONFINDUSTRIA, because the union has not endorsed, nor acceded to, the national sectoral collective agreement signed by CONFINDUSTRIA and the other trade unions.

598. With regard to the allegation concerning the repeated requests to the Government for clarification with the aim of ensuring proper application of the rules governing trade union representation in enterprises, it should be recalled firstly that the principle of freedom of association set out in the first clause of article 39 of the Constitution prevents the State from interfering in or controlling a labour organization and prohibits any intervention by the authorities in trade union action. The Government also points out that, in June 2012, the labour judge in Modena brought before the Constitutional Court the question of the constitutionality of article 19.1(b) of Act No. 300/1970.

599. The Government states that the Italian legal system has a special provision for protection of the freedom of association (article 28 of Act No. 300/1970, "Suppression of anti-union conduct"). This article states that, when an employer engages in anti-union acts aimed at restricting freedom of association and the performance of trade union activity, the local branches of the national trade unions concerned may seek redress from the labour judge in whose jurisdiction the anti-union acts have been committed. If, following a summary and immediate examination (carried out within two days of the action having been lodged), the judge considers that the freedom of association and trade union rights of the workers have indeed been infringed, they may, through a reasoned and immediately enforceable decision, order the employer to put an end to the disputed acts and their consequences. In this connection it is noted that, as indicated in the complaint, the FIOM–CGIL has initiated numerous proceedings against the Group for anti-union conduct under article 28, but that to date they have all been rejected.

600. The Government points out that, in the context of the social and occupational repercussions of the current conflict, it is well aware of its role and responsibilities and has accordingly spared no effort and stepped up contacts with both the Group and the trade unions.

601. With regard to the FIOM–CGIL's allegations concerning discriminatory acts that the Group is claimed to have committed against trade union delegates and workers who are members of this trade union, and in particular the refusal to re-employ the latter in the new Pomigliano d'Arco enterprise, it points out that the Group and the trade union organizations FIM–CISL, UILM–UIL, FISMIC and UGL Metalmeccanici nazionali (with the exception of the FIOM–CGIL), as well as the local authorities and the unified trade union representation, signed a Memorandum of Understanding at the Ministry of Labour and Social Policy on 6 July 2011, in which it was agreed that the Group would request application of the Cassa Integrazione Guadagni Straordinaria (CIGS, a wage guarantee fund in case of technical unemployment), on grounds of the emergency situation in the

enterprise and the cessation of work at the Pomigliano d'Arco site, for a period of 24 months from 15 July 2011 for the 4,367 people working at the site, who would be "placed on zero hour suspension" (total suspension of work). With regard to the management plan for excess staff, the parties planned to reassign all the personnel from the Pomigliano d'Arco production unit to the company Fabbrica Italia Pomigliano SA within a period of 24 months. This measure was expected to result in reclassification of at least 40 per cent of the staff said to be redundant within the first 12 months of the CIGS (from 15 July 2011 to 14 July 2012). The parties took note of the fact that this result was a sine qua non for moving to the second year of the CIGS. The company also envisaged that the remaining surplus staff would be reclassified during the second 12 months of the CIGS (from 15 July 2012 to 14 July 2013). In view of the commitments made by the Group under the abovementioned agreement, it is unfounded to claim (as the FIOM–CGIL does) that the workers affiliated to that trade union have been discriminated against, since the Group still had the possibility to hire all the 4,367 employees of the former Pomigliano d'Arco plant by 14 July 2013.

602. In a communication dated 5 August 2013, the Government provided a copy of the Constitutional Court's Decision No. 231/2013 of 3 July 2013 concerning the constitutionality of article 19.1(b) of the Workers' Statute. This decision states that article 19.1(b) of the Workers' Statute is unconstitutional in that it does not provide for the possibility of establishing enterprise-level trade union representation for those trade unions that have not signed a collective agreement applicable to the production unit but which have, on the other hand, taken part in negotiating such an agreement as representatives of the workers in that enterprise. The Government points out in its communication that, in view of the sensitivity of the issue and the specific nature of the Court's decision, it reserves the option to assess the appropriateness of legislative action with regard to enterprise-level trade union representation.

603. In a communication dated 18 September 2013, the Government forwarded the response by the Group to the allegations of the complainant organization. The Group points out firstly that Italian legislation (the Workers' Statute) provides for two distinct levels of protection with regard to freedom of association: first, articles 14, 15, 16, 26 and 28, which recognize the right of every worker to establish and join trade union associations and to engage in trade union advocacy within the enterprise and which provide for effective protection against anti-union discrimination, measures whose content alone would allow compliance with the requirements of ILO Convention No. 135; and second, articles 19–27 of the Statute which, according to the strict interpretation of article 19, assign a series of additional rights solely to those trade union organizations that are party to a collective agreement applicable in the enterprise. The Group considers that this distinction is in line with the principle, recognized by the Committee on Freedom of Association, whereby the most representative organizations may enjoy certain limited advantages.

604. The Group next recalls that the current wording of article 19 of the Workers' Statute, put to a referendum in 1995, was approved by a large majority of citizens. The Group adds that the new criterion for granting second-level trade union rights is consistent with the content of those rights (to organize assemblies, to take union-related leave of absence, to set up a union notice board, etc.), which promote management of the collective agreement. Indeed, the competent bodies are reported to have declared the provision to be constitutional on several occasions in the past.

605. As for the Constitutional Court's decision of 3 July 2013, while it declared article 19.1(b) of the Statute to be non-constitutional by deciding that, on the basis of the Constitution, enterprise-level trade union representation had to be open to all those unions that had taken part in negotiating the agreement, it also confirmed that the legislative provision at issue could not have given rise to a different interpretation than the one followed by the Group

till then, namely that the rights of trade union representation within an enterprise could be recognized only for those organizations that had signed a collective agreement applicable to a production unit; this was no longer the case for the FIOM–CGIL, since it had signed neither the enterprise-level agreements nor the most recent national collective agreement applicable to the sector in question.

606. In addition, the Group points out that, by withdrawing from CONFINDUSTRIA, the national employers' confederation, it had not sought to eject the FIOM–CGIL from the enterprise but had simply exercised its freedom of negotiation. As for the denial of trade union representation to the FIOM–CGIL in the enterprise, that had been based purely and simply on strict application of article 19 of the Workers' Statute, as interpreted by jurisprudence. The Group clarified lastly that, following the abovementioned decision by the Constitutional Court, it had unilaterally decided to grant to the FIOM–CGIL the possibility of enterprise-level trade union representation.

607. The Group adds that its policy on collective bargaining fully complies with the legislation in force and is entirely legitimate, as shown not only by the agreements concluded with all the representative trade union organizations within the Group, except for the FIOM–CGIL, but also by the support given by a clear majority of workers when they were consulted in a referendum, as was done in the Pomigliano d'Arco and Grugliasco enterprises. The Group clarifies, lastly, that the FIOM–CGIL is not currently the most representative trade union organization in the Group, and that only a small minority of workers have taken part in the strikes it has recently organized.

608. As for the allegations that the FIOM–CGIL was excluded from the process of establishing the European Works Council, the Group points out that by a decision of 20 February 2013 the Turin tribunal considered that no anti-union behaviour could be held against the Group and that the FIOM–CGIL had no right, at the material time, to be part of the Special Negotiating Body preparing to set up the European Works Council.

609. Concerning the interruption of deductions of union dues payable to the FIOM–CGIL, the Group indicates that since 1995 and the referendum that led to reform of article 26 of the Workers' Statute, there is no legal obligation requiring employers to deduct union dues. The Group affirms that collective agreements may have reintroduced this requirement but that, in such a case, owing to the fact that those agreements have the nature of a private contract, the deduction requirement applies only to workers who are members of a trade union organization that is a signatory to the agreement. The Group adds that it complies with the various court decisions ordering it to make such deductions for the FIOM–CGIL at some of its plants.

610. With regard to the allegations of discrimination against members of the FIOM–CGIL during the process of re-employing workers from the Pomigliano d'Arco unit, the Group indicates that, while the Court of Appeal in Rome upheld the FIOM–CGIL's request in its judgment of 12 October 2012, that judgment has been the subject of an appeal in cassation. Furthermore, the accusations of anti-union discrimination are now outdated, since all the workers from the enterprise have been integrated in a new structure (FGA) and are covered by a scheme of technical unemployment (CIGS) and rotation work that is regarded as non-discriminatory by the Rome tribunal.

611. Finally, the Group denies the accusations of generalized discriminatory practices against the representatives and members of the FIOM–CGIL. It also denies the existence of disciplinary sanctions for taking part in strikes concerning working conditions. With regard to the dismissal of FIOM–CGIL trade union leaders at the Melfi plant for obstructing production during a strike, the Group notes that, while the Court of Cassation in its judgment of 2 August 2013 ordered the reinstatement of the three delegates on the grounds

of unjustified dismissal, the Court also confirmed the existence of the acts that the three employees are alleged to have carried out.

C. The Committee's conclusions

612. *The Committee recalls that, in the context of the denunciation by the Fiat Group of the collective agreements to which it was bound and the conclusion of new agreements that have not been signed by the FIOM–CGIL, the present complaint concerns firstly the exclusion of that organization from the enjoyment of a series of trade union rights, and in particular the right to have representatives at the level of the enterprise (a right reserved to organizations that are signatories of agreements in force in the Group), and secondly allegations of acts of anti-union discrimination, of which the FIOM–CGIL and its members within the abovementioned Group claim to be victims.*

613. *The Committee notes that the complainant organization alleges that: the Group has violated Conventions Nos 87, 98 and 135 by denying the FIOM–CGIL, a particularly representative trade union in the sector and the Group, the benefit of a series of trade union rights, including in particular the right to have plant-level union representatives; based on a strict interpretation of Italian legislation, these rights have been reserved solely for organizations that are signatories of agreements in force in the Group; the Group has practised a policy of anti-union discrimination against the FIOM–CGIL and its members, including suspending the deduction of union dues for FIOM–CGIL members alone, excluding a representative of the FIOM–CGIL from the European Works Council, discrimination in recruitment and unjustified dismissals of trade union leaders; and the Government has taken no steps to end the violations denounced, and in particular has taken no initiatives to clarify the interpretation of Italian legislation and avoid the benefit of trade union rights, including that of appointing enterprise-level trade union representatives, from being reserved solely for organizations that are signatories of collective agreements applicable to the enterprise.*

614. *The Committee notes the initial comments by the Government, in which it indicates that: by virtue of article 19 of the Workers' Statute, as amended by the 1995 referendum, only trade unions that are signatories of collective agreements applicable to the production unit are entitled to establish enterprise-level trade union representation and to exercise the rights deriving therefrom, which at the time of the complaint was not the case for the FIOM–CGIL within the Group; by virtue of the principle of non-interference by the public authorities in matters of freedom of association, it was not up to the Government to clarify the rules implementing article 19 of the Statute; concerning the supposed anti-union policy of the Group, article 28 of the Workers' Statute provides for a particularly effective judicial procedure for "Suppression of anti-union conduct"; all the proceedings brought by the FIOM–CGIL against the Group on the basis of this article have thus far failed; and concerning the allegations of discriminatory non-rehiring of workers affiliated to the FIOM–CGIL within the Pomigliano enterprise, the Group had a period until 14 July 2013 to rehire all the employees of the former company who had thus far been technically unemployed. Before that date, it was therefore premature to allege any discrimination in recruitment.*

615. *The Committee also takes note of the supplementary observations of the Government, in which it informs the Committee of the Constitutional Court's Decision No. 231/2013 of 3 July 2013 declaring article 19.1(b) of the Workers' Statute to be unconstitutional.*

616. *Lastly, the Committee takes note of the observations of the Group, as conveyed by the Government, indicating that: according to the strict interpretation of article 19, under which a series of rights are granted exclusively to trade union organizations that are signatories of collective agreements applicable in the enterprise, articles 19–27 of the*

Workers' Statute are in line with the principle, recognized by the Committee, whereby the most representative organizations may enjoy certain limited advantages; the suppression of the FIOM–CGIL's trade union representation in the enterprise does not reflect anti-union policy but stems solely from strict application of article 19 of the Statute, as interpreted by jurisprudence; since the 1995 reform of article 26 of the Workers' Statute, there is no general legal requirement for employers to deduct union dues from salaries; as recognized by the Turin tribunal, the FIOM–CGIL had no right, at the material time, to be represented in the process of establishment of the European Works Council; in line with the Constitutional Court's decision of 3 July 2013, the Group recognizes the FIOM–CGIL's enterprise-level trade union representation; and the Group considers the various allegations of anti-union acts and discrimination in the complaint to be unfounded.

617. *The Committee observes that the complainant organization, the Group and the Government agree that the fact of non-recognition of the FIOM–CGIL's right to have trade union representatives within the Group's enterprises stems from a strict application of article 19.1(b) of the Workers' Statute, which provides that trade unions that are signatories of collective agreements applicable to the production unit may establish enterprise-level trade union representation. In this connection, the Committee takes note of the Constitutional Court's decision of 3 July 2013, which declares the abovementioned provision to be unconstitutional inasmuch as it does not allow for the possibility of establishment of enterprise-level union representation for those trade unions that have not signed a collective agreement applicable to the production unit but which have instead taken part in negotiating such an agreement as representatives of the enterprise's workers.*

618. *The Committee takes particular note of the arguments of the Constitutional Court that: article 19.1(b) of the Workers' Statute does not carry out its function of selection of trade unions on the basis of their representativeness but could, on the contrary, become a mechanism for excluding organizations that enjoy significant representativeness within the enterprise; making the benefit of trade union rights depend exclusively on a position of agreeing with an employer undermines, from the point of view of collective bargaining, the pluralism and trade unions' freedom of action that are enshrined in article 39 of the Constitution of the Republic of Italy; and the provision in question introduces an unjustified sanction on disagreement, which undeniably impinges on the trade union's freedom to choose the most appropriate forms for defending its members' interests.*

619. *In this regard, while it has always accepted that the fact of recognizing the possibility of trade union pluralism does not preclude granting certain rights and advantages to the most representative organizations, provided the determination of the most representative organization is based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse, and the distinction should generally be limited to the recognition of certain preferential rights, for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 354], the Committee wishes to point out that the legislative provision at issue in this case does not come within the scope of the abovementioned principle, owing to the fact that the criterion for recognition of rights which it establishes is based not on the greater or lesser representativeness of the trade unions but on the position they adopt and the results they achieve at the negotiating table. In this light, the Committee considers that the Constitutional Court's decision, of 3 July 2013, fosters compliance with ILO Conventions and principles concerning freedom of association and collective bargaining, inasmuch as making the possibility of having enterprise-level trade union representation subordinate to reaching agreement with an employer on the content of a collective agreement could restrict trade union organizations' freedom of action and freedom of collective bargaining, enshrined respectively in Article 3 of Convention No. 87 and Article 4 of Convention No. 98. On this subject, the Committee*

notes with satisfaction that, following the judgment by the Constitutional Court, the Group now recognizes enterprise-level trade union representation by the FIOM–CGIL.

620. *The Committee notes however that, as the Constitutional Court itself has stated, its decision of 3 July 2013 has neither the intention nor the effect of defining in detail the conditions for assigning the strengthened trade union rights provided for under the Workers' Statute. In this connection, the Committee notes that the Government has stated, in view of the sensitivity of the issue and the specific nature of the Court's decision, that it reserves the possibility to assess the appropriateness of legislative measures with regard to enterprise-level trade union representation. The Committee requests the Government to act quickly in the matter and to keep it informed of the initiatives taken, in consultation with the social partners, to draw any legislative consequences from the Consitutional Court's decision concerning the definition of criteria for assigning the strengthened trade union rights recognized by article 19 of the Workers' Statute, in line with the ILO's Conventions and principles concerning freedom of association.*

621. *With regard to suspension of the deduction of trade union dues only for members of the FIOM–CGIL, the Committee notes the observations by the Group, namely that the collective agreement providing for trade union dues to be deducted only for employees who request it, is legally applicable only to the trade union organizations that are signatories of the agreement and their members, but that the Group respects the various court decisions whereby it has been ordered to make such deductions on behalf of the FIOM–CGIL in some of its enterprises. On that subject, the Committee notes that several Italian tribunals have in fact ordered that deduction of union dues for the FIOM–CGIL be maintained, having taken the view that their suspension constituted anti-union behaviour that would, in particular, violate the workers' right to choose freely the trade union to which they decide to pay their dues. In this regard, the Committee recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see* ***Digest****, op. cit., para. 475]. Observing that the deduction of trade union dues of affiliated workers in favour of the various representative trade unions was discontinued with regard to the FIOM–CGIL after its refusal to sign the collective agreement, the Committee, in view of the merits of the case and taking into account the court decisions already rendered ordering the resumption of such deductions in several enterprises of the Group, requests the Government to bring together the parties concerned, in order to ensure that all the employees of the Group affiliated to the FIOM–CGIL may continue to have their union dues deducted from their salaries and paid to the said trade union organization.*

622. *Concerning the allegations of unjustified exclusion of the FIOM–CGIL from the process of establishing the European Works Council, the Committee takes note of the Group's indications that the Turin tribunal had not found anti-union behaviour to have taken place in that regard. The Committee requests to be kept informed of any other judicial decision that may be taken on the subject.*

623. *With regard to the allegations of discrimination against members of the FIOM–CGIL in the process of re-employment of workers from the Pomigliano d'Arco unit, the Committee takes note of the Rome appeal court's judgment of 9 October 2012, in which it considered that members of the FIOM–CGIL had been discriminated against in hiring and ordered the Group to re-employ 126 workers who were members of the FIOM–CGIL within a period of six months. The Committee also takes note of the Group's observations that the appeal court's decision is the subject of a further appeal in cassation, and that all the workers in the establishment have now been incorporated in the new structure (FGA) and are all subject to arrangements for technical unemployment (CIGS) and employment by*

rotation that are regarded as non-discriminatory by the Rome tribunal. The Committee requests to be kept informed of the various judicial developments in this case.

624. *Concerning the allegations regarding the dismissal of three FIOM–CGIL delegates from the Melfi establishment, the Committee takes note of the judgment of the Court of Cassation dated 2 August 2013, which confirms the unjustified nature of the dismissals and definitively orders the reinstatement of the three trade union delegates. The Committee requests the Government to indicate whether the three trade union delegates have actually been reinstated.*

625. *Lastly, the Committee notes that the present case contains a large number of disputes concerning allegations of anti-union discrimination of which the FIOM–CGIL and its members are claimed to be victims. It also notes the existence of a series of judicial decisions by various courts recognizing the existence, in some of these disputes, of anti-union practices in the Group under consideration. While noting that, in some cases, the final judicial decisions have not yet been rendered, the Committee considers it necessary to recall that anti-union discrimination constitutes one of the most serious violations of the freedom of association, since it may compromise the very existence of trade unions [see* ***Digest****, op. cit., para. 769]. In this light, the Committee requests the Government not only to keep it informed of the outstanding judicial decisions but also to take the necessary initiatives, such as facilitating dialogue between the Group and the complainant organization, to help prevent any new conflicts of a similar nature from arising within the Group under consideration. The Committee requests the Government to keep it informed of this matter.*

The Committee's recommendations

626. ***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 act quickly in the matter and to keep it informed of the initiatives taken by the Government, in consultation with the social partners, to draw any legislative consequences from the Constitutional Court's decision of 3 July 2013 concerning the definition of criteria for assigning the strengthened trade union rights recognized by article 19 of the Workers' Statute, in line with the ILO's Conventions and principles concerning freedom of association.

(b) Observing that the deduction of trade union dues of affiliated workers in favour of the various representative trade unions was discontinued with regard to the FIOM–CGIL after its refusal to sign the collective agreement, the Committee, in view of the merits of the case and taking into account the court decisions already rendered ordering the resumption of such deductions in several enterprises of the Group, requests the Government to bring together the parties concerned, in order to ensure that all the employees of the Group affiliated to the FIOM–CGIL may continue to have their union dues deducted from their salaries and paid to the said trade union organization.

(c) The Committee requests the Government to indicated whether the three trade union delegates of the FIOM–CGIL from the enterprise of Melfi, which were the subject of the ruling of the Court of Cassation of 2 August 2013, have actually been reinstated.

(d) Concerning the other allegations of anti-union behaviour and discrimination contained in this case, the Committee requests to be kept informed of the outstanding judicial decisions. It also requests the Government to take the necessary initiatives, such as facilitating dialogue between the Group and the complainant organization, to help prevent any new conflicts of a similar nature from arising within the Group under consideration. The Committee requests the Government to keep it informed of this matter.

CASE NO. 3031

DEFINITIVE REPORT

Complaint against the Government of Panama presented by the National Union of Education Workers (SINTE)

Allegations: The complainant alleges that the administrative authority rejected its application for legal personality on the grounds that the provisions of the Labour Code do not apply to public servants

627. The complaint is contained in a communication from the National Union of Education Workers (SINTE) dated 5 June 2013.

628. The Government sent its observations in a communication dated 9 September 2013.

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

A. The complainant's allegations

630. In its communication of 5 June 2013, the National Union of Education Workers (SINTE) states that it is a teachers' union in the process of becoming established, with nationwide coverage in public and private schools. SINTE alleges that, on 23 June 2011, it submitted an application for legal personality – along with all the documentation required under the labour law – to the Labour Ministry's Department of Social Organizations of the Directorate-General of Labour and Workforce Development, and that the application was declared unfounded by the department in question on 20 July 2011. SINTE adds that, on 22 September 2011, the Directorate-General of Labour and Workforce Development issued decision No. 9 DGT dismissing the appeal lodged against the decision of the Department of Social Organizations on the grounds of inadmissibility.

631. The complainant indicates that the administrative authority rejected its application on the grounds that the provisions set out in the Labour Code do not apply to the public sector. In this regard, SINTE points out that its members include not only public servants but also teachers in the private sector, and that all members work in the same branch – education. Lastly, the complainant asserts that its intention is not to establish an association under ordinary law pursuant to the general right of association enshrined in article 39 of the

Constitution, but to exercise its right to organize under article 68 of the Constitution and international conventions.

B. The Government's reply

632. In its communication of 9 September 2013, the Government states that it is in compliance with the ratified conventions, including those concerning freedom of association. Furthermore, it recalls that it maintains a policy of tripartite dialogue and that, with the ILO's support, it is promoting the implementation of Conventions Nos 87 and 98 via the committees set up within the framework of the Panama Tripartite Agreement, which was signed by the social partners on 1 February 2012.

633. The Government adds that, in the instant case, the Department of Social Organizations of the Directorate-General of Labour rejected SINTE's application for trade union status via Note No. 317 DOS.2011 of 20 June 2011 when it became aware of the fact that the founding members of the union were public servants and hence not governed by the Labour Code. In the aforementioned note, it cited the 8 June 1998 decision of the First High Labour Court, which was subsequently upheld by the Supreme Court of Justice, ruling that the provisions established in the Labour Code did not apply to workers in the public sector. The Government states that the Constitution differentiates between the right of association and the right to organize, both of which are governed by the Constitution, and that that does not restrict public sector workers' right of association, since they are able to form an organization by registering with the Government Ministry. The Government indicates that the Ministry of Labour and Workforce Development is unable to take action and grant legal personality to a group of public sector workers, as doing so would contravene the law.

634. Finally, the Government declares that, under the provisions of the Panama Tripartite Agreement, it is for the committee responsible for the compliance of national legislation with ILO Conventions, in particular the Subcommittee on Administrative Careers, to decide on amendments to the law by common agreement.

C. The Committee's conclusions

635. *The Committee observes that in this case the complainant alleges that the labour administration authority rejected its application for legal personality in 2011 on the grounds that the provisions of the Labour Code did not apply to the public sector. (SINTE states that its membership includes teachers in the private sector as well as public servants, and that they all work in the same branch – education.)*

636. *In this regard, the Committee notes that the Government reports that: (1) the Department of Social Organizations of the Directorate-General of Labour rejected SINTE's application for trade union status via Note No. 317 DOS.2011 of 20 June 2011 when it noted that the founding members of the union were public servants and that they were not governed by the Labour Code; (2) in that note, it cited the 8 June 1998 decision of the First High Labour Court, subsequently upheld by the Supreme Court of Justice, which ruled that the provisions established in the Labour Code did not apply to workers in the public sector; (3) the Constitution differentiates between the right of association and the right to organize, both of which are governed by the Constitution, and that that does not restrict public sector workers' right of association, since they are able to form an organization by registering with the Government Ministry; (4) the Ministry of Labour and Workforce Development is unable to take action and grant legal personality to a group of public sector workers, as doing so would contravene the law, and (5) under the provisions of the Panama Tripartite Agreement, it is for the committee responsible for the compliance*

of national legislation with ILO Conventions, in particular the Subcommittee on Administrative Careers, to decide on amendments to the law by common agreement.

637. *The Committee takes note of this information and recalls that in the past it has had occasion to examine allegations of an administrative authority having declined to grant legal personality to a union of public servants whose employment relationship is governed not by the Labour Code but by the Public Administration Careers Act [see Case No. 2677, Reports 354, 357, 360 and 367]. The Committee recalls that on that occasion (1) it considered that "there are no grounds for challenging the validity of special legal regulations which govern public servants' right to organize in so far as such regulations comply with the provisions of Convention No. 87", and (2) requested the Government to take steps to ensure that national legislation guarantees the public servants who do not work in the administration of the State (which is the case for teachers in the public sector) adequate protection against anti-union discrimination and interference, as well as the right to collective bargaining.*

638. *The Committee reiterates the recommendations made at that time, and trusts that the committee responsible for the compliance of national legislation with ILO Conventions, in particular the Subcommittee on Administrative Careers, will take the necessary steps to draw up, as a matter of urgency, specific draft provisions to bring the Public Administration Careers Act into conformity with the principles of freedom of association and collective bargaining laid down in the relevant Conventions and to guarantee the rights and guarantees mentioned in the previous paragraph so as to ensure that the complainant may obtain legal personality and be registered as a trade union in the near future.*

The Committee's recommendation

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

The Committee trusts that the committee responsible for the compliance of national legislation with ILO Conventions, in particular the Subcommittee on Administrative Careers, will take the necessary steps to draw up, as a matter of urgency, specific draft provisions to bring the Public Administration Careers Act into full conformity with the principles of freedom of association and collective bargaining laid down in the relevant Conventions so as to guarantee public servants who do not work in the administration of the State (which is the case for teachers in the public sector) adequate protection against anti-union discrimination and interference, as well as the right to collective bargaining, and to ensure that the complainant may obtain legal personality and be registered as a trade union in the near future.

CASE NO. 2937

INTERIM REPORT

Complaint against the Government of Paraguay presented by
- **the Single Confederation of Workers (CUT)**
- **the Union of Workers of the enterprise Itaipú Binacional-Lado Paraguayo (STEIBI)**
- **the Union of Drivers and Services of the Alto Paraná (SICONAP/S) and**
- **the Union of Workers of Itaipú Binacional (SITRAIBI)**

Allegations: The complainant organizations report non-compliance by Itaipú Binacional-Lado Paraguayo with a collective agreement, the subsequent negotiation of a collective agreement with minority unions and reprisals following a strike

640. The complaint is contained in communications from the Union of Workers of the enterprise Itaipú Binacional-Lado Paraguayo (STEIBI), the Union of Drivers and Services of the Alto Paraná (SICONAP/S), the Union of Workers of Itaipú Binacional (SITRAIBI) and the Single Confederation of Workers (CUT) dated 26 September and 18 October 2011.

641. At its meetings in March, June and October 2013, the Committee made urgent appeals 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 (November 1971), it would present a report on the substance of the case, even if it had not received the information or observations from the Government in due time. To date, no information has been received from the Government.

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

A. The complainants' allegations

643. In their communications of 26 September and 11 October 2011, the complainants state that STEIBI and SITRAIBI are first-level trade unions for the workers of the enterprise Itaipú Binacional-Lado Paraguayo (hereafter, the enterprise). SICONAP/S is a first-level trade union for all transport and services workers in the Alto Paraná department, including the workers in the enterprise and in its subcontractors. The enterprise is an institution established under article III of the treaty signed between the Republic of Paraguay and the Federative Republic of Brazil on 26 April 1973 and ratified by Paraguay under Act No. 389 of 11 July 1973.

644. The complainants indicate that the enterprise signed a collective agreement on working conditions (CCCT) with the complainant organizations and that between June and September 2010 they submitted several complaints of non-compliance to the enterprise. They add that in December 2010, STEIBI requested the Deputy Minister of Labour and Social Security to reject the enterprise's application for approval of an addendum to the

agreement signed with four minority trade unions (according to the complainants, STEIBI represents 81 per cent of the workers). However, the administrative authority denied the request and approved the addendum by Decision No. 1665 of 24 December 2010.

645. The complainants report that the negotiations of the CCCT for the period 2011–12 were held between 10 March and 14 April 2011. In this context, a complaint was submitted to the authorities indicating that the enterprise was circulating malicious allegations that the trade unions had brought excessive demands to the negotiations, and that it was dividing the trade unions.

646. The complainants report that on 26 April 2011, in an open demonstration of anti-union practice, the enterprise signed the CCCT for the period 2011–12 with several minority trade unions, sidelining the complainant organizations, which together represent 90 per cent of the workers. The complainants add that on 27 April 2011 they informed the enterprise management that their respective assemblies had rejected its counter-proposals and had decided to hold a 30-day strike, starting on 3 May 2011. The complainants report that, in an act of intimidation against the right to strike, the enterprise filed a complaint on 10 May alleging that the complainants on strike were blocking the enterprise's entrances and applied for an injunction. This was rejected after the court registrar declared that the complaint was inadmissible.

647. The complainants indicate that on 23 May 2011 documents were signed establishing the end of the CCCT negotiation with the enterprise, a supplementary agreement, and the end of strike with compromise agreement. In the last document, the enterprise agreed not to file any administrative or legal actions against the workers involved in the strike, regardless of whether they were members of the trade unions that declared the strike. The trade unions agreed not to file any legal and/or administrative actions for non-compliance with the CCCT for 2010–11 (according to the complainants, this demonstrates that the enterprise admits to non-compliance with the CCCT).

648. The complainants report that, without observing the compromise agreement ending the strike, by way of reprisal against the trade unions, the enterprise: (1) terminated its relationship with the transport subcontracting companies (SICONAP/S had members working in those companies) without providing a reason and made the recruitment of workers in new transport companies contingent on them giving up their SICONAP/S membership, and (2) intends to introduce changes to an employment sector (tourism coordination), which would have the immediate effect of making STEIBI members redundant. Lastly, the complainants also report that the enterprise has established a new trade union which has been registered by the administrative authority.

B. The Committee's conclusions

649. *The Committee regrets that, despite the time elapsed since the presentation of the complaint, the Government has not provided the information requested, despite being invited to do so by means of three urgent appeals (the last of these at its meeting in October 2013).*

650. *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 hoped to receive from the Government.*

651. *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The*

Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning the allegations made against them.

652. *The Committee observes that, in the present case, the complainants allege that the enterprise: (1) failed to comply with the CCCT for the period 2010–11 which, according to the complainants, had been the subject of several complaints submitted to the enterprise and before the administrative authority; (2) in a clear demonstration of anti-union practice, signed the CCCT for the period 2011–12 with several minority trade unions, sidelining the complainant organizations, which together represent 90 per cent of the workers; and (3) did not comply with an agreement that it had signed with the complainant organizations with a view to ending the strike and took reprisals (according to the allegations, it terminated its contracts with transport companies that employed SICONAP/S members and made the recruitment of workers in the new transport companies contingent on them giving up their SICONAP/S membership; it intends to introduce changes to an employment sector (tourism coordination), which would have the immediate effect of making STEIBI members redundant; and has established a new trade union which has been registered by the administrative authority).*

653. *In this regard, the Committee recalls "the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations" and that "agreements should be binding on the parties" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 934 and 939]. The Committee also wishes to recall that, on numerous occasions, it has stressed that "respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their having participated in a strike or other industrial action. It is irrelevant for these purposes whether the dismissal occurs during or after the strike" [see* ***Digest****, op. cit., para. 663]. In these circumstances, the Committee urges the Government to send its observations on all the allegations made in this case without delay.*

The Committee's recommendation

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

> ***The Committee urges the Government to send its observations on all the allegations made in this case without delay and in particular on those reporting that the enterprise Itaipú Binacional-Lado Paraguayo: (1) failed to comply with the CCCT for the period 2010–11 which, according to the complainants, had been the subject of several complaints submitted to the enterprise and before the administrative authority; (2) in a clear demonstration of anti-union practice, signed the CCCT for the period 2011–12 with several minority trade unions, sidelining the complainant organizations, which together represent 90 per cent of the workers, and (3) failed to comply with an agreement that it had signed with the complainant organizations with a view to ending the strike and took reprisals (according to the allegations, it terminated its contracts with transport companies that employed SICONAP/S members and made the recruitment of workers in the new transport companies contingent on them giving up their SICONAP/S membership; it also intends to introduce changes to an employment sector (tourism coordination), which would have***

the immediate effect of making STEIBI members redundant; and has established a new trade union which has been registered by the administrative authority).

CASE NO. 3010

INTERIM REPORT

Complaint against the Government of Paraguay presented by
– UNI Global Union and
– the Trade Union of Workers and Employees of Prosegur Paraguay, SA (SITEPROPASA)

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

655. The complaint is contained in a communication from the Trade Union of Workers and Employees of Prosegur Paraguay, SA (SITEPROPASA) and UNI Global Union dated 31 October 2012.

656. At its October 2013 meeting, 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 (November 1971), it could present a report on the substance of the case, even if the requested information or observations from the Government had not been received in time. In a communication dated 12 March 2014, the Government informs that it will provide documents and reports related to the case.

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

A. The complainants' allegations

658. In their communication of 31 October 2012, SITEPROPASA and UNI Global Union report that, on 25 September 2011, a meeting of the constituent assembly of the trade union was called, at which the procedures for registering the trade union with the administrative labour authority were initiated. On 26 September, the trade union was registered in accordance with Resolution No. 62/2011 of the Office of the Deputy Minister for Labour of Paraguay. The enterprise Paraguay, SA was informed of this by telegram. The complainants allege that once the enterprise had been informed of the establishment of the trade union, it dismissed the following workers, who it identified as promoters and organizers within the trade union: Mr Víctor Fretes, Mr Pío Antonio Hermoza, Mr Carlos Denis and Mr Esteban González, the press and public relations secretary. The complainants state that it was not possible to bring a case before the courts requesting their

reinstatement, as they did not possess reliable documentation to corroborate their status as union organizers.

659. The complainants add that, on 23 December 2011, the trade union informed the employer of its intention to promote the negotiation of a collective agreement on working conditions and submitted a draft that had been approved by the assembly of the trade union. According to the complainants, the enterprise employed delaying tactics and the trade union turned to the administrative authority, requesting it to mediate. They state that, on 2 May 2012, representatives of the enterprise and the trade union signed an initial agreement establishing a period of two months at the end of which both parties would sign the collective agreement on working conditions, once the negotiations were complete. The complainant organizations allege that, once the period of two months had elapsed, the agreement was never signed owing to the enterprise's unwillingness to continue with the negotiations.

660. The complainants allege that, during the negotiating process, the following trade union members were dismissed: Mr Antonio Robledo, Mr Hermenegildo Areco, Mr Víctor Martínez, Mr Heriberto Ortiz and Mr Alfredo Ramírez. The complainants state that, in this context, the workers who were members of SITEPROPASA, satisfying all the legal requirements, decided to hold an eight-day strike from 18 to 26 July 2012 (the strike was extended to 4 August 2012). The complainants allege that the enterprise carried out acts of persecution and intimidation against the workers from the beginning of the strike. In particular, they state that several trade union leaders and members received telephone calls at home from employees of the enterprise, who informed their families that any worker who participated in the strike would be dismissed and would no longer be able to support their family. Furthermore, they allege that law enforcement officers were present at the picket line and marches, in order to intimidate the strikers.

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

meeting all the necessary criteria, they are informed that they cannot be hired because Prosegur Paraguay, SA has published a list containing the names of the striking workers.

B. The Committee's conclusions

662. *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 having been invited to do so by means of three urgent appeals (the last one having been made at its October 2013 meeting).*

663. *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 hoped to receive from the Government.*

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

665. *The Committee notes that, in the present case, the complainant organizations allege that the enterprise Prosegur Paraguay, SA: (1) dismissed four founding members of the trade union when the enterprise was informed of its establishment; (2) refused to comply with the initial agreement for negotiating a collective agreement on working conditions; (3) dismissed five trade union members during the negotiation process; (4) replaced striking workers and carried out acts of intimidation against them (the complainants allege that the workers received telephone calls at home informing their families that they would lose their jobs for participating in the strike, and that law enforcement officers were present at the picket line and marches carried out by the strikers); (5) it succeeded in dismissing 230 trade union members (who accepted compensation) who had participated in the strike, after having informed them that the strike would be declared unlawful and that they would be dismissed without pay; and (6) it submitted a list containing the names of the striking workers to other enterprises in the sector, thereby preventing them from gaining employment.*

666. *In this respect, the Committee regrets that the Government has not sent its observations on these serious allegations of anti-union discrimination and urges it to send them without delay, after obtaining the observations of the enterprise concerned. The Committee wishes to recall that, in general, "no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment", and that "all practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 771 and 803].*

667. *In the light of the above principles, the Committee requests the Government to take urgent steps to ensure that an investigation is conducted without delay into all the allegations made in this case and, if these are found to be true, that the necessary remedial measures are taken. The Committee requests the Government to keep it informed of developments in this regard.*

668. *Furthermore, recalling that "measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements" [see **Digest**, op. cit., para. 880], the Committee requests the Government to do everything in its power to promote collective bargaining between the parties. The Committee requests the Government to keep it informed of developments in this regard.*

The Committee's recommendations

669. ***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 take urgent steps to ensure that an investigation is conducted without delay into all the allegations made in this case and, if these are found to be true, that the necessary remedy measures are taken. The Committee requests the Government to keep it informed in this regard.

(b) Recalling that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, the Committee requests the Government to do everything in its power to promote collective bargaining between the parties. The Committee requests the Government to keep it informed of developments in this regard.

CASE NO. 2982

INTERIM REPORT

Complaint against the Government of Peru presented by
– the General Confederation of Workers of Peru (CGTP)
– the Federation of Civil Construction Workers of Peru (FTCCP) and
– the Confederation of Workers of Peru (CTP)

Allegations: Murder and threats against union leaders and members in the construction sector, inadequacy of the measures taken and ineffectiveness of the investigations, maintenance of the registration of pseudo-unions and the progressive entry of some pseudo-unions into official institutions, to the detriment of the complainant federation

670. The complaint is contained in a joint communication by the General Confederation of Workers of Peru (CGTP) and the Federation of Civil Construction Workers of Peru (FTCCP) dated 20 August 2012. In a communication of 29 November 2013, the Confederation of Workers of Peru (CTP) made allegations related to the initial complaint.

671. The Government provided its observations in communications dated 23 October 2012, 17 September, 15 November and 20 December 2013, and 3 February 2014.

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

A. The complainants' allegations

673. In their communication of 20 August 2012, the CGTP and the FTCCP allege the murder of union leaders and workers in the construction sector for the sole reason that they belonged to the FTCCP. The alleged murders were committed in the context of extortion by mafia and criminal groups posing as workers' unions, which offer "protection" or "security" to businesses and charge workers for being able to work, and force them to give up their membership of the FTCCP, and instead to join their pseudo-unions. This situation of violence and threats, which has already been examined by the Committee on Freedom of Association, and which began in 2006, has also since the time of the previous Government involved police officers, whose complicity with these criminal groups has given rise to the linking of criminality and corruption. This has created a climate of intimidation and violence, which seriously hinders union activities. The struggle for the control of civil construction works also frequently results in confrontations between mafia groups organized under the previous Government.

674. More specifically, the complainant organizations allege that in 2012 these criminal groups murdered the following union leaders:

– Carlos Armando Viera Rosales, organizing secretary of the Callao Civil Construction Union, on Friday, 10 February 2012 at 7.30 a.m. by three hired killers who fired four bullets at him as he left home to carry out his daily union duties. This leader had had the courage to denounce the mafia groups in Ventanilla which, with political protection and infamously using the honourable name of scaffolding workers, engage in extortion from engineers and construction companies.

  Police officers in the Ventanilla Criminal Investigation Department, in coordination with officers of the tactical action (SUAT) and intelligence services of the Callao regional police force, succeeded in identifying and capturing the suspected murderer of Armando Viera Rosales, who was detained by judicial order in the Sarita Colonia Prison in Callao and was released three months later.

– Guillermo Alonso Yacila Ubillus, Deputy Secretary-General of the Callao Civil Construction Union and Secretary-General of the Callao branch of the CGTP, who was murdered by shots fired by hired killers as he left the union offices to go home at approximately 7.45 a.m. on 3 July 2012. The police in the province of Callao are currently investigating the case, but the results of the investigation are not yet known.

– Rubén Snell Soberón Estela, Deputy Secretary-General of the Chiclayo Union and general coordinator of the Lambayeque regional section of the FTCCP, who was murdered on 7 August 2012 at 7.30 a.m., on his way from his home to a meeting with unemployed civil construction workers at the Elías Aguirre stadium in Chiclayo. Two criminals shot him directly in the head and chest, causing his immediate death.

This occurred at a time when the FTCCP was publicly denouncing death threats against its Secretary-General, Wilmar Zegarra Bonilla, in which certain elements of the national police and the illegal organization led by the criminal known as "Viejo Paco" were reported to be involved.

– The complainant organizations emphasize that up to now those responsible for the murders committed in 2012 have not been identified, despite the evidence that they are the result of illegal action by the criminal mafia, whose members are known even to the national police.

675. The complainant organizations also allege the murder of the following members of the FTCCP: (1) Jorge Antonio Vargas Guillén, murdered on 19 August 2011, in the district of Pacasmayo – La Libertad, whose alleged murderers have been identified as Alberto Rojas Paucar and Ana Cecilia Guevara Biminchumo; (2) Luis Esteban Luyo Vicente, murdered on 31 January 2012, in the district of Imperial, Cañete province, for which Adrián Rojas Ore and Artemio López Flores have been identified as responsible, acting in complicity with others who have not been identified. In both cases, the Homicide Investigation Department of the DIRINCRI of the Peruvian national police handed the perpetrators over to the Public Prosecutor's Office to be charged by the judiciary, which, however, appears not to have taken any action; and (3) Rodolfo Alfredo Mestanza Poma, murdered on 17 June 2011 in the district of Ancón (Lima), where he was engaged in building a road from Ancón to the city of Pativilca (Huacho), with solid evidence of the responsibility for the crime of pseudo-union leaders. The Homicide Investigation Department of the DIRINCRI of the Peruvian national police is investigating the case. The complainant organizations note that the outcomes of the investigations and proceedings in relation to these serious crimes against workers show the lack of interest and ineffectiveness of the authorities, as well as the ineffectiveness of the Public Prosecutor's Office and the judiciary.

676. The complainant organizations emphasize that the present Ministry of Labour and Social Protection is resisting carrying out a review of the innumerable registrations of pseudo-unions by the previous Government, which include criminal groups that did not meet the minimum legal requirements, such as having construction workers in their membership.

677. According to the complainant organizations, violence in construction work has increased recently. Although, at the request of the complainants, the current Government has demonstrated the political will to eradicate this problem by creating a Multi-Sectoral Commission to review the situation and propose solutions, the activities of the criminal groups have increased, as demonstrated by the alleged murders. The Multi-Sectoral Commission can, where necessary, require public and private entities and offices to provide statistical reports and other information necessary for it to discharge its functions, investigate informal labour in the construction sector and violence in construction work.

678. The FTCCP has proposed measures for the elimination of violence in the construction sector, including: the review of the registration of unions, to ensure that they are only composed of construction workers, and not of criminals; the establishment of a single national register of construction workers; the decentralization and provision of infrastructure and financial support to the Department for the Protection of Civil Construction Works (DIVPROC) to ensure that it has national coverage; and effective coordination with the Public Prosecutor's Office and the judiciary. However, action has not been taken on these proposals.

679. The criminal mafias, organized under the previous Government, use their cover as "registered unions" to make inroads into institutions. They replaced the representative of the complainant organization on the board of the National Construction Industry Training Service (SENCICO), a public institution. The pseudo-unions are also planning to destabilize the complainant federation, and are trying to enter the CONAFOVICER, with the tacit acceptance of the Ministry of Labour and Social Protection, where their claims are being processed.

B. The Government's reply

680. In its communication of 23 October 2012, the Government reaffirms that the State of Peru, in accordance with international law, and as a legal entity governed by the relevant international and national standards, does not promote "pseudo-unions", but encourages, defends and promotes freedom of association, and the right of all citizens to associate freely, as set out in the Magna Carta (Constitution):

> Article 28. The State recognizes the right of workers to join trade unions, to engage in collective bargaining and to strike. It ensures their democratic exercise:
>
> 1. It guarantees freedom for forming trade unions.
> 2. It encourages collective bargaining and promotes peaceful settlement to labour disputes.
>
> Collective agreements are binding in the matters concerning their terms.
>
> 3. It regulates the right to strike so that it is exercised in harmony with social interest. It defines exceptions and limitations.

681. In addition, the Collective Labour Relations Act (Supreme Decree No. 010-2003-TR) provides:

> Section 2. The State recognizes the right of workers to organize, without previous authorization, for the study, development, protection and defence of their rights and interests and the social, economic and moral improvement of their members.
>
> Section 3. Membership shall be free and voluntary. The employment of a worker may not be made conditional upon membership, non-membership or renunciation of membership, nor shall the worker be obliged to join a union, or prevented from so doing.
>
> Section 4. The State, employers and their representatives shall refrain from any action which limits, restricts or diminishes, in any way, the right of workers to organize, and from interfering in any way with the establishment, administration or operation of unions established by workers.

682. The Government refers to the specific measures that the State has taken to combat violence in civil construction. Aware of the problem, in 2010 the Peruvian State created, through the Ministry of the Interior, a special police unit to investigate and try to control these crimes, with the title of the Specialized Police Department for the Protection of Construction Works (DIVPROC) of the Peruvian national police. Its mission is to guarantee the execution of civil works and to prevent fraudulent civil construction workers from engaging in extortion against businesses in the sector.

683. This Department initially operated in the city of Metropolitan Lima, but at the request of the unions new units have been established in cities in the regions of Lambayeque, Ica, and recently in Ancash.

684. The Government points out that, in general, the violence in civil construction has its origins in the disputes between unions to control construction works through jobs for their members. This situation has led to complaints by union members against one another, including accusations of attempted murder and threats to their safety and health (as well as

many others), which the appropriate authorities are currently investigating. The Government indicates that the State, through the Office of the President of the Council of Ministers and Supreme Decision No. 173-2012-PCM, has established a Multi-Sectoral Commission, chaired by the Ministry of Labour and Employment Promotion, and including representatives of the ministries of the interior, housing, transport and justice, and of regional and local governments. The purpose of the Multi-Sectoral Commission is to prepare a report on the civil construction sector with a view to promoting measures to formalize labour and eliminate violence in the sector. The technical secretariat of the Multi-Sectoral Commission is provided by the General Directorate of Labour of the Ministry of Labour. The Commission was established on 4 July 2012, when it was agreed that:

– a representative of the Public Prosecutor's Office would have a standing invitation, in view of the importance of the penal aspects covered by the Commission;

– a representative of the Peruvian Chamber of Construction (CAPECO) and representatives of the most representative unions would be invited to the following sessions;

– both preventive and enforcement action would be taken. The preventive action would consist of: the establishment of a register of works, to specify the location of works and the number of jobs; and the establishment of a register of construction workers, based on a certification process with a view to the professionalization of the sector; and

– tripartite management would be adopted for the standardization of skills, vocational training, etc.

685. The Multi-Sectoral Commission approved a workplan at its meeting on 18 July 2012. It also decided to set up a working group comprising the Directorate of Employment, the CAPECO and the most representative unions, to evaluate the process of the standardization and accreditation of skills; and a working group comprising the Public Prosecutor's Office, the Ministry of the Interior, DIVPROC and SENCICO to prepare an enforcement strategy.

686. Meetings have been continuing to propose and implement action in partnership with the unions, with greater priority being given to the registration of unions.

687. As the Committee on Freedom of Association can see, the State promotes freedom of association, taking care not to interfere in the establishment, administration or functioning of unions. The claims of the complainant organizations are not therefore logical, as it is the State that ensures that there are no acts that impede the right to organize, and that union activities are carried out appropriately, in accordance with the law.

688. The allegations in the present case pertain to criminal matters, for which reason the complainants should apply to the relevant authority, namely the Public Prosecutor's Office, which is competent to initiate investigations and level charges against those responsible. These crimes do not fall within the mandate of the Committee.

689. With regard to the allegations pertaining to the registration of unions, the Government explains the procedure, in which the initial entry in the register of unions (an administrative process) generates an administrative file number, which is unique. Subsequent entries (changes to the statutes and in the executive board) are separate administrative procedures, each governed by the specific requirements set out in the Single Text on Administrative Procedures (TUPA) of the Ministry of Labour and Employment Promotion. These subsequent procedures are initiated by the union, and are assigned a

registration number and added to the file created for the original registration of the union, so that there is a record of all the union's acts in relation to the same administrative authorities.

690. The Government emphasizes that these procedures are considered in the TUPA of the Ministry of Labour and Employment Promotion to be automatically approved, in accordance with section 17 of Supreme Decree No. 010-2003-TR, the single complete text of the Collective Labour Relations Act, and section 22 of the regulations under the Act, approved by Supreme Decree No. 011-92-TR. Peruvian jurisprudence has indicated that this type of procedure is based on the presumption of truthfulness, which means that the administrative authorities have to assume from then on that the documents and declarations submitted by unions are genuine. Therefore, in accordance with section 31(1) of Act No. 27444, the General Administrative Procedures Act, such procedures are considered to be approved based on the mere submission of the required documents, provided that they meet the requirements established by the TUPA.

691. The following documents therefore have to be submitted (as set out in points 18 and 19 of the TUPA): an application in the form of a sworn declaration, in the appropriate format, indicating the name and address of the enterprise in which they operate, where appropriate; and originals, or copies certified by a public notary, or if not by the justice of the peace of the district, of the following additional documents:

TUPA 18: Unions	TUPA 19: Federations and confederations
■ Minutes of the constituent general assembly of the union, which shall include the given names, family names, identity documents and signatures of those present, as well as the title of the union, the approval of the statutes and the list of those elected to the executive board, indicating the length of their mandate.	■ Minutes of the constituent general assembly of the federation or confederation, which shall include the given names, family names, identity documents and signatures of those present, as well as the title of the union organization, the approval of the statutes and the list of those elected to the executive board, and the length of their mandate.
■ Statutes (typed).	■ Statutes (typed).
■ Lists of the members with their given names and family names, profession, position or specialization, national identity document number and certificate of military service, where applicable, and date of membership.	■ The list of the affiliates (unions or federations), as appropriate, duly registered by the Administrative Labour Authority, indicating the registration number or the registration decision, and the office where they are registered.

692. The Government adds that it is therefore clear that the TUPA merely establishes formal requirements, under the terms of which the responsible authority makes an assessment based on a review of the documents submitted. If a union provides all the necessary documentation, the authority issues a certificate of registration of the union. This procedure is based on section 17 of the single complete text of the Collective Labour Relations Act, which provides that the union shall be entered into the corresponding register kept by the labour authority. Registration is a formal procedure, not a constituent act, and cannot be refused, except in the case of failure to comply with the respective requirements. It should also be noted that the registration of a union confers upon it trade union status, allowing it to conduct the activities described in the single complete text of the Collective Labour Relations Act. It should also be noted that this procedure is in accordance with Article 2 of ILO Convention No. 87 on freedom of association, which provides that:

> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

693. For all the above reasons, the Government requests the Committee to set the case aside.

694. In its communication of 17 September 2013, the Government provides information supplied by the Second Office for Expeditious Decisions of the Second Office of the Provincial Corporate Criminal Prosecutor of Cañete relating to the investigations into the death of Luis Esteban Luyo Vicente. According to this information, the following have been detained for their active participation in the confrontation involving the use of firearms led by the brothers Manuel and Edwin Sanchez Villa, and Francisco and Alfredo Vargas Cambillo: Adrián Rojas Oré, Juan Artemio López Flores, Leopoldo Dante Escobar, Jorge Luis Gutiérrez Villalobos, Jorge Espilco Vilcapuma, Jorge Villa Huamán and Steven Gabriel Flores Ormeño. These men attacked the civil construction workers of Imperial, fatally wounding Luis Esteban Luyo Vicente, who died on 31 January 2012. In addition, it reports the detention of Héctor Augusto Villaruvia Lázaro for crimes against the public administration, violence and resisting authority. At present, the case is at the second stage of common criminal proceedings, that is the intermediary stage, awaiting the determination of the date and time of the trial by the Second Court of Preparatory Investigation once criminal charges have been brought against the presumed perpetrators at the corresponding hearing.

695. In its communications of 15 November and 20 December 2013 and 3 February 2014, the Government provides information on the investigations into the deaths of Carlos Armando Viera Rosales, Guillermo Alonso Yacila Ubillus, Rodolfo Alfredo Mestanza Poma, Rubén Snell Soberón Estela (this case involves a considerable number of accused) and Jorge Antonio Vargas Guillén, which have been entrusted to the appropriate Offices of the Public Prosecutor, namely: that of Carlos Armando Viera Rosales by the 13th Office of the Provincial Criminal Prosecutor of Callao; Guillermo Alonso Yacila Ubillus by the Sixth Office of the Provincial Criminal Prosecutor of Callao; Rodolfo Alfredo Mestanza Poma by the Office of the Criminal Prosecutor of Huara-Huacho; Rubén Snell Soberón Estela by the Second Office of the Corporate Provincial Prosecutor of Chiclayo – José Leonardo Ortiz; and Jorge Antonio Vargas Guillén by the Office of the Provincial Prosecutor of the Second Office of the Joint Corporate Prosecutor of Pacasmayo.

696. The reports attached by the Government indicate that it has been possible to identify and detain the suspected murderers of Carlos Armando Viera Rosales, Luis Esteban Luyo Vicente and Rubén Snell Soberón Estela; that in the case of Jorge Antonio Vargas Guillén, one of the murderers was sentenced to 20 years in prison; that there is plausible evidence that the three persons identified had an interest in killing Guillermo Alonso Yacila Ubillus; and that the two murderers of Rodolfo Alfredo Mestanza Poma have not been identified. In its communication dated 3 February 2014, the Government provides very detailed information on the status of investigations and of the numerous judicial proceedings in relation to the murders of Guillermo Alonso Yacila Ubillus and Rubén Snell Soberón Estela.

C. The Committee's conclusions

697. *The Committee notes with deep concern the allegations made by the CGTP and the FTCCP relating to the murder in 2012 of three union leaders in the civil construction sector (Carlos Armando Viera Rosales, Guillermo Alonso Yacila Ubillus and Rubén Snell Soberón Estela) and three union members (Jorge Antonio Vargas Guillén, Luis Esteban Luyo Vicente and Rodolfo Alfredo Mestanza Poma), as well as the climate of violence, threats and extortion by criminal mafia groups and pseudo-unions. According to the allegations, police officers have been involved in the situation since the previous Government, and the violence is sometimes caused by confrontations between organized mafia groups seeking control of construction projects. The complainant organizations also allege a lack of interest and effectiveness by the authorities and the impunity of the groups*

committing the crimes. The complainant organizations further allege the maintenance by the authorities of the registration accepted by the previous administration of a number of pseudo-unions, and the progressive entry of a number of the latter into official institutions, to the detriment of the FTCCP.

698. *With regard to the allegations of the murder of three union leaders and three union members, the Committee, while deeply deploring these acts, notes the Government's explanations that generally the reason for the violence in civil construction lies in the disputes between unions for the control of construction works through jobs for their members. The Committee observes the Government's indication that to combat the problem of violence in civil construction: (1) the Specialized Police Department for the Protection of Construction Works of the Peruvian national police was set up in 2010 to investigate and attempt to control these crimes, ensure the execution of civil construction works and prevent false civil construction workers from engaging in the extortion of companies; the Department operated initially in Lima and, at the request of the unions, new units have been established up to now in cities in three regions; and (2) a Multi-Sectoral Commission was established in 2012 composed of representatives of five different ministries and of regional and local governments, which has issued a standing invitation to a representative of the Public Prosecutor's Office and to representatives of the most representative unions and of the Peruvian Chamber of Construction; it was also agreed in 2012 to establish a tripartite working group to assess the process of the standardization and accreditation of skills, and a working group comprising different authorities to define an enforcement strategy. The Multi-Sectoral Commission is adopting a preventive approach by establishing a register of construction works, specifying the location of the works and the number of jobs, and a register of construction workers based on a certification process with a view to the professionalization of the sector, as well as adopting a tripartite management system for the standardization of skills, vocational training, etc. However, the Multi-Sectoral Commission is also adopting a repressive approach involving measures for the eradication of violence. The Committee notes the Government's indication that the Public Prosecutor's Office is competent to initiate the respective investigations, including when the complainants lodge complaints concerning crimes, for which reason the Government considers that the present case does not lie within the competence of the Committee. In this regard, the Committee wishes to point out that the violent criminal acts alleged by the unions in this case, while having occurred against the background of an inter-union struggle, affect union leaders and employers in the exercise of their activities, and that they therefore lie fully within its function of the defence of freedom of association and the right to organize; furthermore, the alleged murders are prolonging a situation of violence in the construction sector which has given rise, for example, to an earlier report by the Committee [see its 368th Report, Case No. 2883, paras 799–810]; and lastly, it is clear that the rights of workers, employers and their organizations cannot be exercised properly in a climate of violence, threats and fear.*

699. *The Committee notes that the detailed information from the Public Prosecutor's Office on the status of the investigations, provided by the Government, reveals that: (1) the perpetrators of the murders of Carlos Armando Viera Rosales, Rubén Snell Soberón Estela (according to the Government, this case involves a large number of accused), Luis Esteban Luyo Vicente and Jorge Antonio Vargas Guillén have been identified and detained (in the case of the latter trade unionist, one of the murderers was sentenced to 20 years in prison); (2) there is plausible evidence that the three persons identified had an interest in killing the trade unionist Guillermo Alonso Yacila Ubillus; and (3) the perpetrators of the murder of Rodolfo Alfredo Mestanza Poma have not yet been identified. The Committee firmly expects that in the near future the current criminal investigations will identify all of the perpetrators and instigators of the murders, that responsibilities will be clearly identified and that those found guilty will be severely punished. The Committee requests the*

Government to keep it informed in this regard, and also on the progress of the criminal proceedings.

700. *The Committee appreciates the measures taken to combat the violence in the construction sector (the Multi-Sectoral Commission and its various working groups; the division of the Specialized Police Department for the Protection of Construction Works of the Peruvian national police), which are aimed at engaging in coordinated preventive action and enforcement by all the central and local authorities, with the participation of the Public Prosecutor's Office and the most representative unions and employers' organizations. The Committee invites the Government to continue taking measures in the framework of the existing tripartite dialogue. The Committee, however, observes the intolerable nature of the situation of violence in the sector and the need for further measures for its eradication. In this regard, the Committee expresses its deep concern at the extent and breadth of the divergence between the reasons advanced by the complainants and by the Government concerning the causes of the violence. The complainants ascribe the violence to criminal mafia groups and pseudo-unions which engage in extortion, while the Government considers that the violence is motivated by disputes between unions to control civil construction works through jobs for their own members. The Committee requests the Government to provide additional information in support of its explanations and suggests that the Public Prosecutor's Office be instructed to conduct a thorough investigation into the reasons for the violence in the construction sector and those responsible for it, and that all the necessary penal action is taken based on the findings of these investigations. The Committee wishes to emphasize in this respect the principle that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 2006, para. 43]. The Committee also recalls the principle 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 [see* ***Digest****, op. cit., para. 44].*

701. *With regard to the complainants' allegations that the labour authorities are maintaining the registration of pseudo-unions that engage in extortion, the Committee understands the Government's explanations that, in accordance with Convention No. 87, the legislation provides for the automatic establishment of unions based on their fulfilment of formal requirements, which essentially consist of the presentation of documents (minutes of the assembly, the list of members of the executive board, etc). However, the Committee recalls that in the case of such serious crimes of extortion and murder as those in the present case, the judicial authorities would have the power to dissolve a union if the criminal liability were proven of the members of its official bodies.*

702. *In relation to the allegation of the entry into official institutions of certain pseudo-unions engaged in extortion, the Committee considers that the complainant organizations have not supported their allegations with sufficient information and particulars, and invites them to do so.*

703. *Lastly, the Committee requests the Government to send without delay its observations with regard to the recent allegations made by the CTP, contained in its communication dated 29 November 2013, concerning various matters, including the murder of union leader Miguel Díaz Medina, and in which it accuses the police of attempting to falsely implicate the union of civil construction workers in acts of extortion and blackmail in complicity with criminals.*

The Committee's recommendations

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

(a) While it deplores and expresses concern at the seriousness of the alleged acts of extortion and the murder of six trade unionists (and one more reported in a recent allegation), and observes that the present case is within the context of an inter-union struggle, the Committee firmly expects that in the near future the current criminal investigations will lead to the identification of all the perpetrators and instigators of the murders of the three union leaders and three union members in the construction sector, that the responsibilities will be clearly identified and that those found guilty will be severely punished. The Committee requests the Government to keep it informed in this regard, and also on the progress of the criminal proceedings. On the other hand, the Committee welcomes the measures taken by the Government concerning, inter alia, the register of workers and works in the construction sector, and invites the Government to continue taking measures in the framework of the existing tripartite dialogue.

(b) The Committee requests the Government to provide additional information relating to its explanations and those of the complainant organizations concerning the causes of the violence against union leaders in the construction sector, and suggests that the Public Prosecutor's Office be instructed to conduct a thorough investigation into the reasons for the violence in the construction sector, and that all the necessary penal action is taken based on the findings of the investigations.

(c) In relation to the allegation of the entry into official institutions of certain pseudo-unions engaged in extortion, the Committee considers that the complainant organizations have not supported their allegations with sufficient information and particulars, and invites them to do so.

(d) The Committee requests the Government to provide without delay its observations with regard to the recent allegations made by the CTP, dated 29 November 2013, concerning various matters, including the murder of union leader Miguel Díaz Medina, and the accusation that the police have wished to falsely implicate the union of civil construction workers in acts of extortion and blackmail in complicity with criminals.

(e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

CASE NO. 2998

INTERIM REPORT

Complaint against the Government of Peru presented by
– the Confederation of Workers of Peru (CTP) and
– the National Federation of Workers of the National Programme for Direct Support to the Most Needy (the Juntos Programme) (FENATRAJUNTOS)

Allegations: Non-renewal of administrative service contracts or dismissal in two public institutions of union officials who represented their union in the collective bargaining process; refusal to grant union leave to union officials with this type of contract, obstacles to collective bargaining and coercion of union members by a representative of a public institution into leaving the union

705. The complaint is contained in a communication from the Confederation of Workers of Peru (CTP) dated 30 October 2012. This organization submitted additional information and new allegations in communications dated 1 February and 20 September 2013. The National Federation of Workers of the National Programme for Direct Support to the Most Needy (the Juntos Programme) (FENATRAJUNTOS), which is affiliated to the CTP, presented its complaint in communications dated 30 September, 21 October and 30 December 2013 and 3 February 2014.

706. The Government sent its observations in communications dated 30 April, 4 June and 2 December 2013.

707. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), 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

708. In its communications dated 30 October 2012 and 1 February 2013, the CTP alleges the non-renewal of the administrative service contracts of Mr Gerald Alfonso Díaz Córdova, general secretary (2012) of the Union of Workers of the National Programme for Direct Support to the Most Needy (the Juntos Programme), Mr Jorge Dagoberto Mejía Mazo, legal defence secretary, and Ms Estela González Bazán social assistance secretary. This was despite the fact that the programme had an approved budget and despite the fact that the first two were members of the committee negotiating the list of demands, so that the dismissals took place during the collective bargaining process; in addition, neither official was allowed to continue to participate in the committee negotiating the list of demands for 2012–13. The CTP also alleges the non-renewal by the Institute of the Sea of Peru (IMARPE) of the administrative service contract of Mr Víctor Vicente Basantez Roldán, who was involved in negotiating the list of demands presented by the union. Furthermore, on 30 July 2013, the Juntos Programme failed to renew the contract of Mr Roger Freddy

Gamboa Reyes, the new general secretary (2013) of the union operating in the programme, after he reported that one of the managers in the La Libertad region had committed a sexual offence against a female member of the union.

709. In its communication dated 20 September 2013, the CTP alleges that the Juntos Programme does not wish to sign the collective agreement for 2012–13 despite an agreement having been reached between the workers, the representatives of the State-run programme and the Lima Regional Directorate of the Ministry of Labour.

710. In its communication of 30 September 2013, the FENATRAJUNTOS, which is affiliated to the CTP, reiterates the allegations made by the CTP and indicates that the Juntos Programme is refusing to grant union leave to union officials. In addition, one of the managers of the programme coerced union members into submitting letters of withdrawal from the union out of fear that their contracts would not be renewed; obviously, these workers have indicated to national officials that they do not wish to be identified, because they are afraid that they will be fired. The withdrawal letters were addressed to the institution and not to the union, as would be normal practice. In its communication of 30 December 2013, the complainant supplies statistics illustrating the decrease in the number of its affiliates in the various offices of the Juntos Programme.

B. The Government's reply

711. In its communication of 30 April 2013, the Government states that, in its complaint, the CTP refers primarily to the arbitrary dismissal from various public sector bodies of union officials with administrative service contracts, which were not renewed by the relevant authority and which, in its opinion, affects the right to freedom of association which is enshrined in the ILO Conventions that have been ratified by Peru.

712. In this regard, the Government indicates that administrative service contracts are a system of contracts that are fixed-term, renewable and comprise the following rights: (1) a maximum 48-hour working week; (2) a weekly rest period of 24 consecutive hours; (3) 15 consecutive days' leave for a complete year of service; (4) affiliation to the ESSALUD contributory social security scheme; and (5) affiliation to a pension scheme.

713. Furthermore, in a ruling issued on 31 August 2010, the Constitutional Court recognized the labour status of the system of administrative service contracts, declaring it to be compatible with the constitutional framework, even though it found that there was a constitutional omission in the provisions concerning the right to organize and the right to strike, which had to be rectified by the administrative labour authority in accordance with article 28 of Peru's Constitution. Further to this ruling, Supreme Decree No. 065-2011-PMC of 26 July 2011 established amendments to the regulations governing administrative service contracts, granting the right to organize to the workers under this system, allowing them to form trade unions and join the public service trade unions which already exist in the body in which they provide services, as well as the right to strike. In addition, Act No. 29849 of 6 April 2012 provides for the gradual phasing-out of the special system established by Legislative Decree No. 1057, in conjunction with the implementation of the new civil service regime. This act guarantees, inter alia, the following labour rights: pay not lower than the legal minimum wage; maximum working time of eight hours per day or 48 hours per week; weekly rest period of 24 consecutive hours; refreshment breaks which are not included in the working day; bonus for national holidays and Christmas; 30 calendar days' paid holidays; paid maternity/paternity leave; freedom of association; affiliation to a pension scheme (either a private scheme or the national one); affiliation to the ESSALUD health scheme; and employment certificates.

714. Grounds for termination of the contract include: resignation, mutual consent and expiry of the contract period.

715. With regard to the allegation by the CTP that the failure to renew the contracts of union officials represents a violation of Convention No. 87, the Government indicates that the bodies mentioned in the complaint operate under the public system and they are therefore authorized to conclude contracts with their staff according to the special system of administrative service contracts. There has been no failure by these bodies to meet any legal obligation with respect to former contract employees since they are not obliged by law to renew contracts once they have expired, and this has been the situation regarding the abovementioned workers. To see the abovementioned situation in terms of a violation of freedom of association is unjustified since the fact of being a union member or union official under contract does not imply that public bodies are unable to terminate the contract, in view of the nature of administrative service contracts, which are of a temporary and fixed-term nature.

716. Accordingly, the Constitutional Court of Peru, the highest constitutional authority in the country, stated in the ruling handed down in Case No. 2626-2010-PA/TC that:

> 5. … the system of substantive protection against arbitrary dismissal provided for under the special system of administrative service contracts is in conformity with article 27 of the Constitution.
>
> 6. … It should also be pointed out that this does not mean that an administrative service contract is converted into an unlimited contract, as section 5 of Supreme Decree No. 075-2008-PCM establishes that the "duration of an administrative service contract, cannot exceed the period corresponding to the fiscal year within which the contract is concluded"; in other words, administrative service contracts are only ever fixed term and any administrative action to the contrary would be illegal.

Consequently, it stated that:

> … should the employment relationship be ended without any of the grounds for termination of the administrative service contract being present, the person concerned will be entitled to receive the compensation provided for in clause 13.3 of Supreme Decree No. 075-2008-PCM.

In conclusion, it states that:

> 7. … this is a special, transitory system of employment whose purpose is to initiate the process of reform and restructuring of the civil service, and for this reason any constitutional claim for reinstatement cannot be considered.

717. The action of the Juntos Programme has in no way affected the trade union rights of the programme's staff. Regarding the alleged dismissal of Mr Víctor Vicente Basantez Roldán, a trade union official and employee of IMARPE, on 31 December 2008, IMARPE signed an administrative service contract (Contract No. 070-2009) with Mr Basantez Roldán, under the provisions of Legislative Decree No. 1057 and its regulations, assigning him duties as a technician in the Logistics and Infrastructure Unit.

718. By addendum to Administrative Service Contract No. 070-2009, the parties agreed to extend the administrative service contract for two months, from 1 May 2012 to 30 June 2012, with the same terms as those specified in the original contract.

719. On 21 June 2012, in other words within the legal time frame, IMARPE informed Mr Basantez Roldán that his existing administrative service contract would not be renewed, which was not a violation of his rights or of the legislation concerning

administrative service contracts. The international commitments that Peru has entered into have therefore not been violated either, as evidenced by the fact that Mr Basantez Roldán subsequently participated in meetings as a representative of the workers hired under the system of administrative service contracts with the executive board of the institute, which placed no restrictions on this activity.

720. The Government reiterates that paragraph 5.1 of the regulations of Legislative Decree No. 1057, approved by Supreme Decree No. 075-2008-PCM, states that "the administrative service contract is for a fixed term. The duration of the contract may not exceed the period corresponding to the fiscal year within which the contract is concluded; however, the contract may be extended or renewed as often as is considered necessary by the contracting entity, depending on its needs, as has been the case. Any extension or renewal must not exceed the fiscal year and must be offered in writing before the expiry of the contract or the previous renewal or extension." In accordance with the provisions of section 10 of Legislative Decree No. 1057, the contract between Mr Basantez Roldán and IMARPE established in its 21st clause that one of the grounds for termination of the contract in question was that mentioned in section 10(h), namely: the expiry of the contract. On 26 June 2012, Mr Víctor Vicente Basantez Roldán filed a motion for reconsideration, which was examined by the legal service of the institution in question and considered to be unfounded.

721. The National Civil Service Authority (SERVIR) has issued an opinion in response to an inquiry from the legal affairs department of the National Public Records Office, specifying that the termination of an administrative service contract upon expiry of the contract (in the event that the body decides not to extend or renew the contract) is not equivalent to dismissal. It follows, therefore, that there has been no violation of freedom of association or of the ILO Conventions that have been ratified by Peru.

722. With regard to the allegations concerning the union official Mr Roger Freddy Gamboa Reyes, in its communication of 2 December 2013, the Government denies any anti-union discrimination and states that he was hired under the administrative service contract system on 30 July 2012, and that his contract was repeatedly renewed until 30 July 2013. On 11 June, he was notified that his contract would be terminated, in accordance with the current legislation on this type of temporary contract, which establishes that no reason needs to be given and that the duration of such a contract cannot exceed one fiscal year. The Government indicates that, as it was a temporary contract, non-renewal is not equivalent to dismissal. The Government adds that the alleged case of the sexual abuse of a female worker by one of the managers of the Juntos Programme, as reported by the union operating within the programme on 10 June 2013, led to an administrative procedure and the corresponding investigation, which found that, in the absence of reliable evidence, no sanctions should be applied. The Government indicates that the Juntos Programme was informed of the complaint on 10 June 2013, in other words after it made its recommendation not to renew the contract of Mr Gamboa Reyes. Furthermore, the Government indicates that, in his performance appraisal of 27 March 2013, Mr Gamboa Reyes was rated as "average" with a mark of 26.5 per cent. Accordingly, the technical coordinator in his area indicated, in a report dated 29 April 2013, that Mr Gamboa Reyes "had not managed to submit his reports and workplans on time, his productivity is low in terms of maintaining lists of beneficiaries and new registrations, he does not follow up with households and he shows a lack of motivation and ability to work in a team". Consequently, in a memorandum dated 30 April 2013, the territorial unit of La Libertad issued a warning to Mr Gamboa Reyes for the reasons set out above, and on 9 May 2013, Mr Gamboa Reyes defended his action and requested that the decision be reconsidered. The administrative unit's response was that it was appropriate to uphold the warning.

723. In several memoranda dated 22 May 2013, the Registrations and Payments Unit reported that certain managers at the local level, including Mr Roger Freddy Gamboa Reyes, had registered heads of households with expired identification cards among the beneficiaries of the Juntos Programme. In Memorandum No. 35-2013-MIDIS/PNADP-UA, those involved were invited to explain the above irregularities, whereupon Mr Gamboa Reyes stated only that he had made an honest mistake. Furthermore – the Government continues – as stated by the executive board of the Juntos Programme, Mr Roger Freddy Gamboa Reyes is involved in a case concerning the unauthorized use of the institution's logo, in violation of the provisions of Supreme Decree No. 003-2008-PCM.

724. In its communications dated 4 June and 2 December 2013, the Government reiterates its previous statements and adds that, if the complainants consider that any of their fundamental rights have been violated, they may appeal to the judiciary. The Government also considers that suitable domestic remedies should be exhausted before an international body is approached, to assess whether the fundamental right of a person was violated or not. On the basis of these facts and considerations, the Government requests the Committee to close this case. In its communication of 3 February 2014, the Government reports the conclusion of the collective agreement 2012–13 (negotiations in which trade union leaders Mr Gerald Alfonso Díaz Córdova and Mr Jorge Dagoberto Mejía Maza took part although their contracts had not been renewed), which contains clauses concerning trade union immunity, prohibition of anti-union retaliation and trade union facilities. The Government adds that the complainant did not provide evidence as regards pressure to withdraw from the union.

C. The Committee's conclusions

725. *The Committee notes that, in the present complaint, the complainant organizations allege (1) the non-renewal of the administrative contracts of the trade union officials Mr Gerald Alfonso Díaz Córdova, Mr Jorge Dagoberto Mejía Maza and Ms Estela González Bazán, who were working for the Juntos Programme; (2) the non-renewal of the service contract of trade union official Mr Víctor Vicente Basantez Roldán, who was working at IMARPE, which is a public body; (3) the dismissal of Mr Roger Freddy Gamboa Reyes, a trade union official employed by the Juntos Programme; (4) obstacles to collective bargaining for 2012–13 in the Juntos Programme, despite an agreement having been reached between the workers, the representatives of the state-run programme and the Lima Regional Directorate of the Ministry of Labour; the obstacles include, according to the allegations, the refusal by the Juntos Programme to allow two union officials to participate in the negotiations on the list of demands; (5) coercion of union members by a manager of the Juntos Programme to submit letters of withdrawal from the union; and (6) the refusal by the Juntos Programme to grant union leave. The Committee notes the Government's declaration that the trade union leaders Mr Gerald Alfonso Díaz Córdova, and Mr Jorge Dagoberto Mejía Maza participated in the negotiations of the collective agreement 2012–13, although their contracts had not been renewed, and that the collective agreement 2012–13 has finally been concluded and contains clauses concerning trade union immunity and prohibition of reprisals for anti-union reasons.*

726. *The Committee also takes note of the Government's statements that: (1) workers with administrative service contracts benefit from union rights in accordance with the law and the jurisprudence of the Constitutional Court, which nevertheless establish the temporary nature of these fixed-term contracts (which are renewable on an as-needed basis), the duration of which for budgetary reasons cannot exceed the period corresponding to the fiscal year within which the contract is concluded; when the employment relationship ends, the person concerned will be entitled to receive the compensation provided for by law; according to the Constitutional Court, this is a special, transitory system of employment, and any constitutional claim for reinstatement cannot be considered; and (2) if the*

complainants consider that any of their rights have been violated, they may appeal to the judiciary.

727. *The Committee also takes note of the Government's specific statements in relation to the case of the non-renewal of the contract of trade union official Mr Víctor Vicente Basantez Roldán (IMARPE), denying the claim that the action taken constitutes a violation of freedom of association. The Committee notes that, according to the Government: (1) IMARPE signed an administrative service contract of a temporary nature on 31 December 2008 and the parties agreed to extend the contract for two months (from 1 May 2012 to 30 June 2012), specifically indicating that the grounds for the termination of the employment relationship was "the expiry of the contract"; and (2) IMARPE did not subsequently prevent Mr Basantez Roldán from participating as a workers' representative in meetings with IMARPE's executive board.*

728. *With regard to the non-renewal of the administrative service contract of trade union official Mr Roger Freddy Gamboa Reyes, the Committee notes that the Government: (1) denies anti-union discrimination and indicates that the union's allegations of sexual abuse were communicated to the employer after the recommendation was made not to renew the contract of this individual; (2) indicates that the system of temporary administrative service contracts does not require that a reason be given; and (3) according to several reports from the Juntos Programme, Mr Gamboa Reyes was issued with a warning for professional misconduct, details of which are provided in the Government's reply, his performance was rated as "average" and he was involved in other irregular activities, including a case involving the unauthorized use of the Juntos Programme's logo.*

729. *The Committee concludes, in the case of the non-renewal of the contracts of trade union officials Mr Víctor Vicente Basantez Roldán and Mr Roger Freddy Gamboa Reyes, that the versions of events given by the trade union organizations and by the Government on the anti-union nature of the decision are contradictory. The Committee notes that, according to the Government, in such cases the parties concerned may appeal to the judicial authority and requests the complainant organizations to indicate whether the union officials in question have lodged appeals before the courts.*

730. *The Committee notes with regret that while providing details on the jurisprudence of the Constitutional Court concerning the temporary contracts, the Government has not sent specific information on the allegations concerning the non-renewal of the administrative service contracts of the union officials Mr Gerald Alfonso Díaz Córdova, Mr Jorge Dagoberto Mejía Maza and Ms Estela González Bazán, of the union of workers operating in the Juntos Programme. The Committee requests the Government to send without delay its observations on these allegations and to institute an investigation through the labour inspectorate in this regard, including into the recent allegations of 30 December 2013 relating to the decrease in the number of its affiliates in the various offices of the Juntos Programme. Concerning the allegations by the complainants relating to the coercion of workers by the Juntos Programme to leave the union, the Committee observes that the Government declares that the complainant organization has not provided evidence in this respect. The Committee invites the complainant organizations to provide information on these allegations of coercion.*

731. *The Committee generally recalls the principle according to which, while it does not have the mandate and will not pronounce itself with respect to the advisability of recourse to fixed-term or indefinite contracts, the Committee wishes to draw to attention that, in certain circumstances, the employment of workers with successively renewed fixed-term contracts for several years may affect the exercise of trade union rights [see 368th Report,*

Case No. 2884 (Chile), para. 213]. The Committee requests the Government to pay attention to this principle when conducting the relevant investigations.

The Committee's recommendations

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

(a) The Committee requests the complainant organizations to indicate whether the union officials Mr Víctor Vicente Basantez Roldán and Mr Roger Freddy Gamboa Reyes have lodged appeals before the courts against the non-renewal of their contracts.

(b) Noting with regret that the Government has not sent specific information on the allegations concerning the non-renewal of the administrative service contracts of the union officials Mr Gerald Alfonso Díaz Córdova, Mr Jorge Dagoberto Mejía Maza and Ms Estela González Bazán, of the union of workers operating in the Juntos Programme, and that neither has it responded to the allegations by the complainants concerning the refusal to grant trade union leave, the Committee requests the Government to send without delay its observations on these allegations and to institute an investigation through the Labour Inspectorate in this regard, including into the recent allegations of 30 December 2013 relating to the decrease in the number of its affiliates in the various offices of the Juntos Programme.

(c) The Committee generally recalls the principle according to which, while it does not have the mandate and will not pronounce itself with respect to the advisability of recourse to fixed-term or indefinite contracts, the Committee wishes to draw to attention that, in certain circumstances, the employment of workers with successively renewed fixed-term contracts for several years may affect the exercise of trade union rights. The Committee requests the Government to pay attention to this principle when conducting the relevant investigations.

(d) The Committee invites the complainant organizations to provide detailed information on the allegations relating to the coercion of workers to withdraw from the union.

CASE NO. 2999

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

Complaint against the Government of Peru presented by the Central Mixed Trade Union of Workers in Enterprises providing services to ESSALUD (SMCUTSERVICES)

Allegations: Dismissal of a trade union officer from the Alberto Sabogal Hospital and dismissals related to abuses of temporary contracts and of labour supply services

733. The present complaint is contained in a communication from the Central Mixed Trade Union of Workers in Enterprises providing services to ESSALUD (SMCUTSERVICES) dated 30 October 2012.

734. The Government sent its observations in a communication dated 5 July 2013.

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

A. The complainant's allegations

736. In its communication dated 30 October 2012, the SMCUTSERVICES alleges that the public employer ESSALUD has been provoking large-scale dismissals with a view to reducing the membership of the union. The complainant organization refers to the dismissal of Gustavo Roger Ospinal Rivadeneyra, labour defence secretary of SMCUTSERVICES in the Alberto Sabogal Hospital, who began working there in January 2007 and whose employment relationship was terminated on 15 August 2012.

737. The union refers to numerous dismissals in several hospitals of workers recruited under the terms of the Act respecting labour supply work that is non-permanent and not principally for the enterprise, although in practice those requirements are not met, for which reason the labour inspectorate acceded to the request to monitor these cases of abuses of rights. Cases have also been denounced to the labour inspectorate concerning deception or fraud in relation to temporary contracts (the legislation provides that they are considered to be without limit of time if the employment relationship continues).

738. The complainant organization alleges that, despite decisions by the Ministry of Labour and Employment Promotion (following interventions by the labour inspectorate) concerning the various enterprises suggesting that the workers concerned should be integrated into ESSALUD, the latter has terminated the employment of 1,200 workers (the complainant provides names of 100 workers in various hospitals).

B. The Government's reply

739. In its communication of 5 July 2013, the Government reports the indications by ESSALUD that: (1) Gustavo Roger Ospinal Rivadeneyra does not and has not worked for ESSALUD and that he had provided services under a labour supply arrangement, that is as

an employee of a third enterprise which was responsible for his recruitment and dismissal; and (2) that ESSALUD has not been in violation of freedom of association.

740. The Government adds that the cases denounced by the complainant do not relate to violations of freedom of association, but to workers in an abusive labour supply situation. It adds that the Ministry of Labour and Employment Promotion has undertaken numerous inspections in enterprises and hospitals, where appropriate recognizing of the employment relationship of the workers concerned took place in cases where there have been breaches of the law. Accordingly, as a first step, the situations have been regularized of 118 workers, and inspections continue to be undertaken in enterprises used by ESSALUD. The Government provides information supplied by ESSALUD explaining that the irregularities had their origins in earlier administrative decisions, and that to give effect to the instructions of the labour administration a high-level commission has been established with a view to the adoption for the workers concerned of the system of administrative service contracts.

C. The Committee's conclusions

741. *The Committee, in the first place, wishes to recall that its competence relates to cases of violations of freedom of association, and not cases of abuse of labour supply services or the misuse of temporary contracts, even though many workers may be affected, and that it is only competent to examine allegations made by the complainant union where a connection is established between such cases and the trade union membership or activities of the persons concerned. However, the Committee notes the action taken to regularize the workers who have been victims of the abuse of labour supply services and the establishment of a high-level commission. In this regard, the Committee wishes to draw the attention that in examining similar allegations it recalled that "it does not have the mandate and will not pronounce itself with respect to the advisability of recourse to fixed-term or indefinite contracts. Nevertheless, the Committee wishes to draw to attention that, in certain circumstances, the renewal of fixed-term contracts for several years may alter the exercise of trade union rights" [see 368th Report, Case No. 2884, Chile, para. 213]. However, this was not the situation alleged in this case.*

742. *With regard to the alleged dismissal on 15 August 2012 of Gustavo Roger Ospinal Rivadeneyra, labour defence secretary of the complainant organization in the Alberto Sabogal Hospital, the Committee notes that the Government has provided information supplied by the public institution ESSALUD according to which there has been no violation of freedom of association and that the abovementioned person was not and had not been a worker at the institution, and had provided services under a labour supply arrangement, that is as an employee of a third enterprise which was responsible for his recruitment and dismissal. The Committee regrets the lack of additional information from the complainant organization concerning its allegation, despite it being invited by the Office to provide such information in accordance with the established procedure. The Committee requests the complainant organization and the Government to indicate whether this union officer, who had been providing services since 2007, is covered by any of the regularization plans referred to by the Government for workers dismissed from enterprises related to ESSALUD (in cases relating to abuses of labour supply services), and whether any legal action has been initiated against his dismissal.*

The Committee's recommendation

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

The Committee requests the complainant organization and the Government to indicate whether the union official Gustavo Roger Ospinal Rivadeneyra is covered by any of the regularization plans for workers dismissed from enterprises related to ESSALUD, and whether any legal action has been initiated against his dismissal.

CASE NO. 3033

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

Complaint against the Government of Peru presented by the Single Trade Union of Workers of Casa Grande and Allied Enterprises (SUTCGA) supported by the Federation of Workers of the Peruvian Revolution (CTRP)

Allegations: Declaration by the administrative authority of the illegality of a strike, dismissal of six trade union leaders and obstruction by the enterprise of the payment of union dues for three months

744. The complaint is contained in a communication of the Single Trade Union of Workers of Casa Grande and Allied Enterprises (SUTCGA) dated 6 March 2013. The complainant organization submitted new allegations in a communication dated 27 August 2013. The Federation of Workers of the Peruvian Revolution (CTRP) supported the complaint in communications dated 25 April and 7 May 2013.

745. The Government provided its observations in communications dated 20 September and 27 November 2013.

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

A. The complainant's allegations

747. In its communications of 6 March and 27 August 2013, the SUTCGA alleges that, following the approval on 9 January 2013 by the extraordinary assembly of delegates of the decision to call a strike on 23 January 2013, in compliance with all the legal requirements (including those relating to the notification of the employer and the authorities within the statutory period of five days prior to the strike, that is, up to 16 January), in pursuance of a series of work-related claims and an end to the violation of the law by the enterprise, the administrative labour authority decided on 18 January to declare the strike notification invalid, adding that the number of members had not been reported and that the communication notifying the employer of the strike and the list of workers engaged in essential services had not been provided (however, the complainant union states that the enterprise had not supplied the list of workers considered indispensable in the event of a strike at the beginning of the year, as required by law).

Finally, on 28 January 2013, following an appeal by the union, the administrative authorities once again declared the work stoppage of 23 January 2013 invalid and illegal.

748. The complainant also alleges the arbitrary dismissal by the enterprise, on 3 May 2013, of six trade union leaders for their trade union activities during the period 2012–13, and particularly the strikes of 23 January and March 2013. It adds that the six union leaders filed a judicial appeal against the enterprise in the First Labour Court of Ascope and that, up to now, they have obtained an interim order for their reinstatement, the execution of which was however delayed by over a month.

749. The complainant further alleges that the enterprise did not transfer the union dues for May, June and July 2013.

B. The Government's reply

750. In its communications dated 20 September and 27 November 2013, the Government indicates that the strike of 23 January 2013, to which the complainant union refers was called in the middle of the collective bargaining process (the Government provides a very extensive list of meetings between the enterprise and the union, indicating the documents signed during the negotiation process), and states that the enterprise did not take any disciplinary measures against the workers who participated in the strike.

751. With regard to the alleged dismissal of Armengol Saucedo Castillo, Jorge Luis Gil Verde, Olegario Rodríguez Reaño, Mauro Lezcano Pajares, Víctor Rubio Olvida and Jaime Noriega Sánchez, the Government observes that, in their capacity as trade union leaders, they convened and presided over the extraordinary assembly of union delegates held on 5 March 2013, as indicated in the report of the extraordinary assembly. The specific agenda of the assembly was the "decision to call a 48-hour strike on 14 and 15 March 2013 in view of alleged labour violations by the enterprise", which was unanimously approved, on the understanding that the decision needed to be confirmed by the base, that is the majority of workers who were members of the union. Accordingly, on 6 March 2013 (the day after the extraordinary assembly), the former leaders communicated to both the enterprise and the Regional Administration for Labour and Employment Promotion of La Libertad the notification of the 48-hour strike, which was held on 14 and 15 March 2013. The following documents were attached to the notification:

- the list of members of the union;
- order No. 145, issued by a sub-directorate of the regional labour administration, confirming receipt of the list of members of the executive board of the union;
- the legally certified copy of the report of the extraordinary assembly of delegates;
- a copy of the record of the ballot;
- the report of the approval of the decision adopted by the extraordinary assembly of delegates, containing the list of names of the members of the SUTCGA who approved the decision by the assembly of delegates to call a 48-hour strike, including their names, signatures and national identity document numbers;
- the sworn statements by the members of the executive board, in which they stated under oath that the decision to call the 48-hour strike was adopted in compliance with the requirements set out in law, with the indication "I assume the corresponding responsibility for any failure to be truthful";

– a copy of the minutes of the direct negotiations between the union and the enterprise; and

– a copy of the request made to the regional labour administration asking for information concerning the notification of essential services by the enterprise.

752. When these documents had been reviewed, report No. 003-2013-SRH was issued recording irregularities, as the list of names of the members of the union who allegedly signed and approved the decision taken by the assembly of delegates to call the 48-hour strike, including their names, signatures and national identity document numbers, contained the following inaccurate information:

– the workers Constante Sagástegui Álvarez, Walter Correa Quiroz y Erasmo Wilmar Obando Sevillano, although members of the union, testified that they did not sign a document in the month of March 2013 approving a strike on 14 and 15 March 2013;

– a group of persons were recorded as having signed the decision who at the time of its alleged approval (6 March 2013) were not working for the enterprise, as their employment had ended; and

– the list contained the name of Carlos Alberto Llanos Salazar, who was sadly no longer a member as he had died on 18 July 2012.

753. Accordingly, the dismissal of the former union leaders was not based on anti-union grounds, but because they committed the serious fault of: failure to comply with labour-related requirements, resulting in a breakdown of good faith; failure to comply with the internal work rules; and the provision of false information to the employer with the intention of causing prejudice or obtaining an advantage. According to the information provided by the enterprise, the former leaders were identified as being responsible for these acts. It should be emphasized that this breach not only concerned the submission of the document containing false information, but also its use to comply with a legal requirement, on the basis of which the strike was also held.

754. According to the information provided by the enterprise Casa Grande, the latter complied with and offered the former leaders all the guarantees of due process, namely: (i) they were sent a letter giving them notice of dismissal in writing, duly supported by the respective documents informing them of the serious fault attributed to them; (ii) they were granted a period of not less than six calendar days to defend themselves in writing against the charges levelled against them; (iii) they were sent another notarized communication to clarify aspects which the former leaders in their replies had raised as not being accurate; (iv) replies to the second notarized communication; (v) further analysis and assessment of the charges and the replies sent by the former leaders; and (vi) once the respective evaluation and analysis had been completed, they were sent letters of dismissal on 3 May 2013, in which they were informed of the specific reasons for their dismissal and the date of termination.

755. This demonstrates that, when the former leaders were dismissed, all the guarantees of due process were observed, such as the right of defence and the principles of immediacy and reasonableness, as required by law when initiating a termination procedure.

756. The Government also confirms that a case is currently before the courts challenging the dismissal of the six trade union leaders. It is being heard by the First Labour Court of Ascope, which is ultimately competent to decide whether or not the dismissals were valid. It adds that the enterprise complied with the interim reinstatement order.

757. With reference to the allegation concerning the failure to pay the union dues, the Government indicates that, according to the enterprise, it did indeed make the payment of the last three union dues referred to in the allegations, although through the judicial assignment of the funds. It opted for that procedure for the following reasons:

– the person who had been receiving the cheque for the union dues every month was Mauro Lezcano Pajares (former financial secretary), whose employment at the enterprise Casa Grande ended on 3 May 2013, for which reason the enterprise, in accordance with the statutes of the union, sent a notarized communication to Segundo Saúl Cabrera Urbina, deputy secretary, who was responsible for assuming that function. However, he replied to the communication indicating that he was no longer the deputy secretary, as he had resigned from that position with full effect. In light of the above, and for reasons of legal security, the enterprise proceeded to the judicial assignment of the union dues so that a duly accredited union representative appearing before the court could take receipt of the payment;

– in accordance with order No. 145-2001-GR-LL-GG/GRTPE-DPSC-SDNCRG, issued on 22 July 2011 by the Sub-Directorate for Collective Bargaining and General Records, the representative status of the executive board elected for the period 2011–13 expired on 21 July 2013; and

– the enterprise Casa Grande was appraised of the conflicts that existed within the union, that are fully known to the Regional Administration for Labour and Employment Promotion of La Libertad, and which resulted in the establishment of two electoral committees, which in turn recognized two executive boards, and it was therefore for the purpose of safeguarding the funds resulting from the contributions of all the unionized workers that it proceeded to the judicial assignment of the union dues at the court of Paz Letrado de Chocope, so that legitimacy to represent the union and receive the payment of the union dues could be confirmed by the courts.

758. In light of the above, the Government requests the Committee to set aside the present complaint and to declare the case closed.

C. The Committee's conclusions

759. *The Committee observes that in the present case the complainant alleges that a strike (on 23 January 2013) was declared invalid and illegal by the administrative authorities, even though all the legal requirements had been met. It also alleges the anti-union dismissal on 3 May 2013 of six union leaders by the enterprise Casa Grande y Anexos in reprisal for their union activities, and that the enterprise did not transfer the trade union dues for May, June and July 2013.*

760. *With regard to the dismissal of the six union leaders, according to the allegations, for engaging in union activities, including the strikes called in January and March 2013, the Committee notes that the enterprise denies any anti-union motivation and indicates that it found that documents had been falsified and that there were irregularities in the list of workers who called the strike in 2013 (irregularities that are described in detail in the Government's reply).*

761. *In view of the divergence between the versions given by the complainant and the Government concerning the reasons for the dismissals, and taking into account the fact that the six union leaders have taken legal action against their dismissal and that the courts have issued an interim order for their reinstatement, which has been given effect by the enterprise, the Committee requests the Government to keep it informed of the outcome of the legal proceedings.*

762. *With reference to the allegation that the strike on 23 January 2013 was declared invalid and illegal by the administrative labour authorities, the Committee observes that the Government, although it indicates that no disciplinary measures were taken against the workers who participated in the strike on 23 January 2013, has not denied that it was the administrative authorities which declared the strike invalid and unlawful (even though that decision was based on the documents attached by the complainants).*

763. *The Committee wishes to recall in this respect, as it has on other occasions when the Peruvian authorities have declared strikes illegal, that responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 628]. The Committee once again requests the Government, as it has done on previous occasions, to take measures to amend the legislation to take this principle into account.*

764. *Finally, the Committee notes the reasons given by the enterprise (and particularly the internal conflict which resulted in the existence of two executive boards) to justify the judicial assignment of the trade union dues for May, June and July 2013, which were to be paid to the union. The Committee recalls that it is not competent to make recommendations on internal dissentions within a trade union organization, so long as the government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization. [See* ***Digest****, op. cit., para. 1114.]*

The Committee's recommendation

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

> ***The Committee requests the Government to keep it informed of the outcome of the trial concerning the dismissal of the six leaders of the complainant union.***

CASE NO. 3037

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

Complaint against the Government of the Philippines presented by the Trade Union Congress of the Philippines (TUCP)

Allegations: The complainant organization alleges that the Government interfered with the right of workers to elect freely their representatives by reversing the results of the elections of its officers

766. The complaint is contained in a communication dated 17 June 2013 from the Trade Union Congress of the Philippines (TUCP).

767. The Government forwarded its observations to the allegations in a communication dated 1 October 2013.

768. The Philippines 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

769. In its communication dated 17 June 2013, the complainant organization alleges that the Government interfered with the right of workers to elect freely their representatives by reversing the results of the elections of its officers.

770. The complainant indicates that the TUCP is a legitimate labour centre registered in accordance with the requirements of the Labour Code, and that its constitution has been respected by past Philippine governments as well as by the ICFTU (now ITUC) since its affiliation over 30 years ago.

771. According to the complainant, TUCP President, Democrito T. Mendoza, 90 years of age, submitted on 19 October 2011 a letter of resignation addressed to the TUCP Board declaring that he resigned as TUCP President effective 1 November 2011. From 19 October to 1 November 2011, the then TUCP General Secretary, Ernesto F. Herrera requested Mr Mendoza several times to reconsider and withdraw his resignation but the latter refused reiterating that his decision was deliberate, voluntary and final. Mr Herrera reported this event at a TUCP Leaders' Caucus on 29 October 2011, with the presence of TUCP Vice-Presidents, Victorino Balais, Zoilo Dela Cruz (also TUCP Treasurer) and Alejandro C. Villaviza (also TUCP Legal Counsel), and TUCP Executive Board Member Arnel Dolendo of the Philippine Trade and General Workers Organization (PTGWO-TUCP). On 1 November 2011, the TUCP Executive Board had not received any letter from Mr Mendoza withdrawing his resignation. His resignation therefore took effect.

772. The complainant states that on 9 November 2011, the Executive Board, which met upon the request of Mr Herrera, was given a copy of Mr Mendoza's resignation letter and noted, accepted and approved the resignation. Mr Herrera further requested the legal opinion of TUCP Vice-President and Legal Counsel, Alejandro Villaviza, according to which: (i) Mr Mendoza is deemed resigned effective 1 November 2011, in the absence of a letter to recall his letter of resignation; (ii) the Executive Board accepted the resignation of Mr Mendoza and as a gesture of recognition of his past services, the Executive Board approved the resolution creating the position of President Emeritus (sponsored by TUCP National Treasurer Zoilo Dela Cruz); and (iii) in accordance with section 9, paragraph 2, article X, TUCP Constitution dated 4 June 1986 as amended on 14 December 2007, TUCP General Secretary Herrera succeeds Mr Mendoza as TUCP President effective 2 November 2011 and shall serve for the unexpired term of Mr Mendoza.

773. The complainant states that Mr Herrera took his oath of office as President in accordance with the TUCP Constitution on 10 November 2011 before the mayor, to comply with his responsibility under the TUCP Constitution and the decisions of the TUCP Executive Board during the meeting of 9 November 2011. He started discharging his duties as TUCP President. Immediately after 1 November 2011, he issued appointments and signed contracts with various international labour federations and organizations as the new President of TUCP, including several projects. All elective officials and professional staff of the TUCP supported and joined Mr Herrera as the new President of the TUCP.

774. The complainant also indicates that, on 18 November 2011, Mr Herrera, in his capacity as new TUCP President, called for a Special TUCP General Council meeting at 1 p.m. at the

TUCP headquarters. Mr Mendoza, pretending to still be TUCP President, and after learning of the meeting called by Mr Herrera at 1 p.m., also called for a General Council meeting on the same date, 18 November 2011, but set it earlier at 10 a.m., also at the TUCP Headquarters. Only Associated Labor Union (ALU) representatives to the General Council and two other federation representatives arrived and responded to the meeting called by Mr Mendoza. Without a quorum, they stayed in the meeting room for the subsequent meeting called by Mr Herrera. More General Council members arrived at 1 p.m. The new arrivals, by themselves, constituted a quorum, even discounting those who attended in response to the meeting called by Mr Mendoza. This led to some verbal confrontation when Mr Herrera arrived and took over as presiding officer. Mr Villaviza stated that he was there to attend the meeting called by Mr Herrera as the legitimate TUCP President, and that, since Mr Mendoza had resigned, he did not recognize him anymore as TUCP President. He also recalled that Mr Herrera had taken over as President pursuant to the TUCP Constitution, as he did not want to appear irresponsible by not assuming the vacant leadership position and the corresponding responsibilities. Mr Mendoza presented the Manifesto of Support calling on him to continue as TUCP President, primarily signed by the officials of his federation (ALU), since two other officials, TUCP Treasurer Zoilo Dela Cruz and Roy Seneres, withdrew their signatures. The meeting became heated because one of the sons of Mr Mendoza, ALU Vice-President Michael Mendoza, issued death threats against Mr Villaviza.

775. According to the complainant, Ms Milagros Ogalinda expressed deep sadness over the fact that loyalty was being verified by Mr Mendoza in this way. Mr Villaviza added that his loyalty was to the organization and to the constitution. Mr Mendoza explained that the reason for his resignation was to check the loyalty of the members to him and to vent his disgust and frustration against Mr Cedric Bagtas, Deputy General Secretary. Mr Gilbert Lorenzo and several other members of the General Council proposed that Mr Mendoza and Mr Herrera meet on their own to resolve the problem, and set aside legal technicalities. Ms Susanita Tesiorna stressed, however, the supremacy of the Constitution in resolving disputes in the organization. The proposal was accepted; it was agreed that, if no amicable settlement was reached, the matter should be decided in accordance with provisions of the TUCP Constitution. On 23 January 2012, Mr Herrera invited Mr Mendoza for dinner and a one-on-one meeting to resolve the pending issue, but no amicable resolution was reached. Mr Mendoza, at this point in time, did not accept the position of President Emeritus.

776. The complainant further states that, on 24 January 2012, Mr Mendoza called a meeting of his group consisting of 11 federations (seven ALU unions and four other unions). TUCP Vice-President Victorino Balais was then appointed General Secretary. The complainant stresses that: (i) the meeting was not valid due to the lack of authority of Mr Mendoza to call a meeting; and (ii) the General Secretary election was not valid as it was not on the agenda and there was no quorum. Moreover, if Mr Mendoza was still President, the General Secretary position could not have been vacant. On 25 January 2012, Mr Mendoza's group took physical occupancy of the TUCP headquarters, allegedly upon the order of Mr Mendoza. Office personnel were pressured to leave the premises and not given enough time to take personal belongings. Mr Herrera, TUCP Vice-Presidents, Robert Flores and Mr Villaviza and staff went to TUCP to make sure that staff and property were safe. They sought the assistance of four policemen of Quezon City. At the closed gate were about 25 individuals in full alert, led by Michael Mendoza, Cecilio Seno, Jr., and Congressman Raymond Mendoza. Despite one hour of peaceful negotiations and the presence of police, Mr Herrera's group was not allowed to enter the compound and left peacefully, in order to prevent untoward violence. On 26 January 2012, Mr Mendoza's group held a press conference and sent out a press release, loaded with baseless and serious accusations against Mr Herrera and his group. Mr Herrera also held a press conference and sent out a press release announcing his succession to the office of TUCP President following the resignation of Mr Mendoza which had been unanimously accepted by the

TUCP Executive Board; and informing the public about TUCP's plan to replace Raymond Mendoza as TUCP party list representative due to loss of confidence and serious allegations of self-dealing.

777. The complainant also indicates that, on 27 January 2012, Mr Herrera called for a general council meeting. The council: (i) reaffirmed that Mr Mendoza had resigned as TUCP President effective 1 November 2011; (ii) reaffirmed the TUCP Executive Board decision affirming the resignation; (iii) reaffirmed the succession of erstwhile TUCP General Secretary, Ernesto F. Herrera as TUCP President, under the TUCP Constitution and Standing Orders; (iv) condemned the illegal occupation of the TUCP premises by Mendoza's group and the ransacking of TUCP property; and (v) welcomed the reactivation of membership by three federations, National Union of Bank Employees (NUBE-UNi), National Labor Union (NLU) and Philippine Association of Free Labor Union (PAFLU) which had stayed away for years because of undemocratic ways under the previous administration; and the projected formal entry of VOICE (Voice in the Call Center Industry) and the Teachers Organization of the Philippines – Public Sector (TOPPS). On 16 February 2012, Mr Herrera met with the DOLE Secretary and Undersecretary and reiterated that, based on the Constitution, Mr Mendoza ceased to be President starting 1 November 2011, which was confirmed on 9 November 2011 by the Executive Board, and that he (Herrera) is the new President with the only vacant position being that of the General Secretary. The DOLE Secretary expressed her hope that the crisis would be resolved amicably and encouraged the conduct of a General Assembly to address the issue.

778. The complainant also states that, on 7 March 2012, the joint meeting of General Council and Executive Board approved, among others, the following resolutions: (i) holding of a TUCP special convention on 16 March 2012, to amend the Constitution and take up such other matters that would address the present crisis besetting the TUCP; (ii) proposed amendments to the TUCP Constitution; and (iii) preventive suspension against the unions supporting Mr Mendoza. Formal notices were subsequently sent to affiliates to invite them to attend the pre-convention meeting on 9 March 2012. The Credentials Committee, chaired by Mr Dela Cruz, and the Constitutional Amendments, Motions and Resolutions Committee, chaired by Mr Villaviza, were created for the special convention of the TUCP leadership.

779. According to the complainant, the TUCP special convention took place on 16 March 2012, with the participation of 350 delegates representing all 16 original federations from the TUCP and ten reactivated members and new federations. The Federation of Free Workers, other unions, the Employers' Confederation of the Philippines, international organizations, the media and others attended as observers. The General Secretary of the International Trade Union Confederation–Asia Pacific (ITUC–AP) endorsed Mr Herrera's constitutional succession to the TUCP presidency, other international federations and foreign unions echoed support and the ITUC General Secretary subsequently sent him a congratulatory message. The convention unanimously confirmed and/or adopted the following resolutions: (i) General council resolution authorizing the conduct of a special convention; (ii) amendments to the TUCP Constitution (including the creation of an Internal Relations and Welfare Board to address issues such as union raiding, intra- or inter-union conflict between affiliates, violations of the TUCP Constitution and other matters pertaining to the ethical behaviour of any union or its leaders; the limitation of the term of office of the President, the General Secretary, and Treasurer to one term, subject to one re-election only; expulsion of union officers as a possible sanction for acts inimical to the interest of the organization, instead of expulsion of the affiliate organization; disallowing the split of affiliate organizations for purposes of gaining additional seats in the voting mechanism of the organization; and prohibiting a federation leader from representing more than one union in the convention); and (iii) perpetual ban on Mr Mendoza, Victorino Balais, Arnel Dolendo, Raymond Mendoza, Michael Mendoza and Gilbert Lorenzo from holding office

in the TUCP. Mr Herrera and Mr de la Cruz were re-elected by the convention as President, and Treasurer, respectively, while Mr Jose P. Umali, Jr. was elected as the new General Secretary, Mr Cedric Bagtas as Deputy General Secretary and Ms Milagros Ogalinda as Assistant Treasurer. The following persons were elected to the 23-member TUCP Executive Board: Susanita G. Tesiorna; Roberto Flores, Gorge Alegarbes; Temistocles Dejon; Arturo Basea; Jesus B. Villamor; David Diwa; Roy Seneres; Eleuterio Tuazon; Alejandro C. Villaviza; and Milagros C. Ogalinda. The corresponding documents were filed thereafter with the Bureau of Labor Relations of the Department of Labor and Employment (BLR–DOLE) to reflect the changes in the board as well as the amendments to the TUCP Constitution.

780. The complainant indicates that, in April 2012, the BLR–DOLE initiated *motu proprio* the case docketed as BLR-O-TR-21-4-27-12 entitled "Intra Union Dispute at the Trade Union Congress of the Philippines (TUCP)". This was done despite the TUCP Special Convention and election of new TUCP officers. In the interim, Mr Herrera continued to discharge the duties and functions of the office of the president by issuing appointments and entering and executing contracts and agreements, both locally and internationally. Further, Mr Herrera was appointed General Secretary of ASEAN Trade Union Council in his capacity as TUCP President. Similarly, invitations for international fellowship programmes for unions from international organizations and union federations are coursed through Mr Herrera. Over a span of 12 months under Mr Herrera's leadership, some 30 trade union leaders and members were sent/participated in various international conferences and training, including the 2013 International Labour Conference (ILC) in Geneva.

781. On 12 August 2012, the BLR–DOLE issued the following decision, the dispositive portion of which reads:

> Wherefore, premises considered, this Office directs the observance of status quo ante or the status prior to the contested resignation. All TUCP elected and appointed officers, with Mr Democrito T. Mendoza as National President and Sen. Ernesto F. Herrera as General Secretary, shall assume and perform the functions of their respective offices pursuant to the provision of section 2, rule XI of Department Order No. 40, series of 2003, as amended, pending a final determination by the TUCP members of their rightful leaders through the secret balloting in a Special Convention. Accordingly, this Office DIRECTS the following: (1) Convening by Mr Mendoza and Sen. Herrera the TUCP General Council, prior to the resignation dispute, for the conduct of election of a new set of TUCP officers, observing the provisions of 2007 TUCP Constitution, within fifteen (15) days from receipt of this Order. The TUCP General Council shall nominate the representatives of the two contending groups to an independent committee hereby created to conduct the election of TUCP officers; and (2) An independent committee is hereby constituted. It shall be composed of a chairperson from the Department of Labor and Employment (DOLE) and two representatives each from the contending groups of Mr Mendoza and Sen. Herrera. The chairperson shall have no voting power except to break a tie. The committee, henceforth, to be called the Committee of Five, shall observe the provisions of the TUCP Constitution particularly section 3(e), article VIII thereof, in the conduction of the election and of its business as the Committee on Election.

782. The decision was appealed by Mr Herrera to the Office of the Secretary of the DOLE pursuant to rule XI, section 16 of Department Order No. 40-03, series of 2003, as amended. According to the complainant, in December 2012, the group of Mr Mendoza called for a Convention, in violation of the decision of the BLR–DOLE, wherein Mr Mendoza relinquished his position which led to the election of Victorino Balais as president.

783. In the complainant's view, in May 2013, the BLR–DOLE has unlawfully split in its official correspondence the organization into two TUCPs: (i) TUCP–ITUC, being represented by Mr Herrera, and (ii) TUCP, being represented by Victorino Balais. More

recently, the preliminary list of delegates for the Philippines submitted by the Government to the ILC, while including the names and positions "UMALI Jr., Jose, Mr, General Secretary, TUCP–ITUC" and "VILLAVIZA, Alejandro, Mr, Vice-President and Legal Counsel, TUCP", also enumerated the following persons whose names have NOT been submitted by Mr Herrera to the Government: "SENO, Gerard, Mr, Vice-President and General Secretary, Trade Union Congress of the Philippines (TUCP)"; "OCAMPO, Esperanza, Ms, Vice-President and Treasurer, TUCP"; "DOLENDO, Arnel, Mr, Vice-President and Chief Legal Counsel, TUCP"; "CORRAL, Luis Manuel, Mr, Member, Executive Board, TUCP"; and "ARCOS, Eva, Ms, Member, Executive Board, TUCP".

784. In conclusion, the complainant believes that the Government committed the following serious and flagrant violations of trade union rights protected under Convention No. 87. Firstly, the complainant alleges that the assumption of intra-union controversy initiated solely by the BLR–DOLE without any complaint filed by interested parties amounted to direct and prejudicial interference and impairment of the rights of the workers to elect their representatives. In the TUCP Constitution, section 9 of its article X provides that: (i) the General Secretary shall take the place of the President in case of temporary absence of the latter; and (ii) in the event of vacancy in the office of the President by reason of death, permanent disability, resignation or removal from office, the General Secretary shall succeed the latter and shall serve for the unexpired term. Upon the resignation of Mr Mendoza, Mr Herrera assumed the presidency pursuant to the above provision. The urgency required for the assumption of the General Secretary to the Presidency during temporary absence is the same as the urgency for permanent vacancy or resignation. There is all the more reason for the urgent and immediate assumption by the General Secretary of the office of the President in case of permanent vacancy or resignation considering the extent and scope of the powers vested in the office. Indeed, a resulting vacancy by reason of resignation automatically operates the second paragraph of section 9, article X as "stopgap measure" for the continuity of the functions of the office. Moreover, in order to dispel any doubt on such constitutional succession, Mr Herrera called for a Convention on 16 March 2012 in which several stakeholders attended as observers, the ITUC–AP General Secretary endorsed Mr Herrera's constitutional succession to the TUCP Presidency, and several other international and foreign union federations echoed international support for such succession.

785. Despite all the developments and the exercise of the right of the TUCP-affiliated federations to elect its new set of officers, the BLR–DOLE still assumed the existence of controversy and negated the successfully conducted election. By taking action on a purported controversy without any complaint filed by interested parties, the BLR–DOLE committed flagrant violation of Convention No. 87 which guarantees full freedom in electing the workers' representatives. The BLR–DOLE action restricted and restrained the exercise of TUCP's right to elect its leaders and officers and amounts to interference. It is an impairment of TUCP's trade union rights which unlawfully curtailed and negated the results of such convention and election. Indeed, it is calculated precisely to suppress the will of the majority of the workers who decided to elect the new leaders of the TUCP. In the complainant's view, the Government has thus clearly and patently breached the guarantees of Convention No. 87.

786. Secondly, the complainant alleges that the decision of the BLR–DOLE directing the observance of status quo ante and reversing the election of new officers during the Special Convention held on 16 March 2012, constitutes not only a restriction that is repugnant to freedom of association under ILO Convention No. 87 but also a mocking disrespect and derogation of the TUCP Constitution. The BLR–DOLE's action in directing the parties to observe the status prior to the contested resignation blatantly disregarded not only the TUCP Constitution but also Convention No. 87 prohibiting restriction in electing their representatives. In a classic fashion of arbitrary, strained and strange interpretation, the

BLR–DOLE administratively decided the controversy as follows: "Section 9, article X simply provides that in case of vacancy by reason of permanent disability, resignation or removal from office the General Secretary 'shall succeed' and not 'to take the place' the President to serve for the unexpired term. The phrase 'to take the place' which is used in the first paragraph of the section imparts immediacy without need of a process while the phrase 'shall succeed' in the second paragraph admits of a contrary sense. The variation cannot be overstretched to mean immediate assumption to the presidency on the stated effectiveness of the resignation. Well-settled is the rule that the power to accept or consent to removal or resignation of elective or appointive officials is vested in the holder of the power to elect or appoint said officials, which in this case is vested in the Convention. Necessarily, in the absence of express or implied delegation of the power to accept or consent to the removal or resignation of the President to the General Council or the Executive Board, resignation and succession to the Presidency can only be accepted or affirmed by the Convention, which is the supreme authority of the Center. It cannot be argued otherwise."

787. Reading together the resignation and the relevant provision of the TUCP Constitution, it is indubitable that with the resignation of Mr Mendoza, there is no additional action that must be done under the TUCP Constitution but for the General Secretary to automatically succeed after the date of its effectiveness on 1 November 2011. Neither the approval nor the consent of the National Executive Board or the General Council or even the Convention is necessary for the assumption by the General Secretary of the position of President after the resignation. The letter of resignation of Mr Mendoza (attached to the complaint) is concise, explicit and unequivocal. The aforequoted provision of the TUCP Constitution is clear, unmistakable, unambiguous, explicit and leaves no room for interpretation. It is self-explanatory that in the event of temporary or permanent absence of the President, the General Secretary shall assume, take the place or succeed the vacant position. Applying the logic of the order issued by the BLR–DOLE, there can be no instance that any resignation by the President can be effective considering that it must still be approved by the Convention. Neither can there be any valid resignation unless there is an election from among the members of the General Council to succeed the resigned officer. Precisely, section 9 of article X of the TUCP Constitution has foreseen such contingency which prompted the framers to expressly indicate the instances when the General Secretary shall assume the position of the President without further action or confirmation or election. The interpretation that there must be a process involved for the General Secretary to succeed the President in case of resignation goes against the basic precept of statutory construction that the express mention of one thing excludes all others. There is no interpretation needed for the operation of section 9, article X of the TUCP Constitution because it is explicit and self-explanatory, and self-executing. In the present case, considering that the General Secretary shall be succeeding "for the unexpired term" of the President, such assumption is automatic and immediate upon the effectiveness of such resignation. The requirement by BLR–DOLE of additional action or process (confirmation of the resignation by the Convention) is not only absent in the TUCP Constitution but also in direct violation of the express and clear provisions of section 9, article X of the TUCP Constitution as well as incongruent to the avowed purpose of maintaining continuity and stability in the functions and duties of the President and thus absurd.

788. Furthermore, the BLR–DOLE has no authority to challenge the results of the election held on 16 March 2012 in the absence of a prejudiced party since no complaint was filed or submitted to it. It constituted undue and unjustified interference contrary to Convention No. 87. One of the findings of the BLR–DOLE is that the TUCP General Council meeting held on 7 March 2012, prior to the Special Convention of 16 March 2012, was not valid on the ground of lack of notice. However, assuming it is true, such ground is personal to the organization, and the BLR–DOLE has no jurisdiction to rule on lack of notice when the

participating organizations have not raised such matter and were not objecting to the meeting. Also, as regards the finding that the Special Convention was not valid, when counting the TUCP labour federation members under the leadership of Mr Herrera, it definitively showed that Mr Herrera had the majority of members under him, namely 21 federations. It is therefore clear that with the participation of these federations, the Special Convention was valid and effective for purposes of electing its new leaders. Additionally, under Mr Herrera's leadership, two new industry unions (the Philippines Land Transport Industry Union (PLTIU) and the BPO Workers Association of the Philippines (BWAP)) have joined the TUCP. PLTIU is the first land transport industry union in the Philippines, represents over 10,000 workers with collective bargaining agreements in the formal transport industry and some 70,000 workers in the informal transport sector, and includes 34 labour associations as its founding members. To date, the TUCP under Mr Herrera consists of a total of 46 national labour federations and workers associations, making it, unassailably, the most representative workers' organization in the Philippines. More workers' organizations and special groups will join the TUCP under Mr Herrera's leadership.

789. Thirdly, the complainant alleges that the decision of the BLR–DOLE unjustifiably restricts and restrains new and reactivated labour federations of the TUCP from participating in the election of officers and leaders. The finding that the new and reactivated member federations cannot be allowed to participate in the special convention called forth therein, clearly and unlawfully restrains and restricts the trade union in choosing their representatives in full freedom in violation of Convention No. 87. The BLR–DOLE invidiously discriminated against the new and re-activated organizations when it ruled that only the original members prior to the resignation can participate in the election of TUCP officers and leaders. Indeed, such discriminatory act is totally incongruent to the TUCP Constitution as well as Convention No. 87. In this case, the unfair and unreasonable discrimination of reactivated or new members as against the existing members would be impeding not only their right to join the organization of their own choosing but also violating the right of the TUCP to determine the conditions of eligibility pursuant to its Constitution. Moreover, the BLR–DOLE decision violated TUCP's trade union rights when it disregarded the numerical majority which participated in the Special Convention and affirmatively showed majority support to President Herrera and to the elected officers of the TUCP.

790. Fourthly and lastly, the complainant alleges that there is clear and premeditated action of the Government to split the TUCP into two groups without lawful authority and in blatant derogation of the TUCP Constitution, and that the Government violated Convention No. 87 when it identified and recognized in its official correspondence and activity two sets of TUCP. According to the complainant, there should be no distinction between TUCP and TUCP–ITUC because it is very clear that there is only one TUCP, which is affiliated with the ITUC and ITUC–AP. The Government has named eight persons as representing TUCP–ITUC and another eight as representing TUCP, two General Secretaries (Jose P. Umali for TUCP–ITUC and Gerard Seno for TUCP) and two Legal Counsels (Alejandro Villaviza and Arnel Dolendo). By doing this, the Government disregarded the fact that there is only one TUCP, registered in the DOLE, which is an ITUC affiliate for more than 30 years. ITUC recognizes only one TUCP of which the President is Ernesto F. Herrera. Moreover, in the complainant's view, by submitting two sets of TUCP officers, the Government is not only misleading the ILC but also disregarding the order of BLR-DOLE mandating the observance of status quo ante. Assuming such order is valid, by recognizing in its official correspondence even with the ILO Victorino Balais and Seno as President and General Secretary of the TUCP, respectively, the Government has disregarded its own order, since this amounts to relinquishment of Mr Mendoza's position as President. Also, by promoting two TUCPs, the Government is fomenting confusion and disunity among the ranks of workers and thus impedes and restricts their organization of

activities and formulation of programmes. This also creates the impression of bias and partiality thereby removing the requirement of an impartial procedure in the final settlement of the issues.

791. The complainant concludes that, by interfering with such intra-union matters and privileges and promoting two sets of TUCP, the Government has flagrantly violated Convention No. 87, as this arbitrary act runs counter to the right of workers to freely elect their representatives.

B. The Government's reply

792. The Government indicates that on 26 January 2012, Mr Democrito T. Mendoza submitted to the BLR the following documents as part of TUCP's reportorial obligations pursuant to section 1, rule V of the Rules Implementing Book V of the Labor Code, as amended by Department Order No. 40, series of 2003, as further amended: (i) new Set of Officers; (ii) statement of confirmation that Mr Democrito T. Mendoza remains the President of TUCP dated 24 January 2012; (iii) General Council Resolution 01-2012 dated 24 January 2012 entitled: "A Resolution of Confirmation of Continuing Support to Mr Democrito T. Mendoza as President of the TUCP"; and (iv) Minutes of the General Council Meeting dated 24 January 2012 on the "Election of Bro. Victorino F. Balais as General Secretary".

793. On 20 February 2012, Ernesto F. Herrera likewise submitted the following reportorial documents: (i) resignation letter of Mr Democrito T. Mendoza dated 19 October 2011; (ii) copy of 2007 TUCP Constitution and by-laws; (iii) excerpts from the 9 November 2011 TUCP Executive Board Meeting; (iv) TUCP Resolution creating the position of president emeritus for Mr Mendoza dated 9 November 2011; (v) factual narration on the current TUCP controversy; (vi) General Council Statement dated 27 January 2012; (vii) General Council Statement dated 3 February 2012; (viii) letters of membership reactivation of three unions; and (ix) letters of membership application of two unions.

794. On 13 March 2012, BLR received another letter from Mr Mendoza with a list of purported new TUCP officers and a TUCP General Council Resolution declaring continued support for Mr Mendoza. In the same letter, the DOLE was notified by Mr Mendoza on the alleged expulsion of Mr Herrera and two other affiliate member organizations from the TUCP through a 7 March 2012 resolution of the Executive Board for violation of article VIII, section 4 of the TUCP Constitution which refers to betrayal, dishonesty and acts inimical to the interest of the organization. The General Council allegedly concurred in the resolution.

795. On 16 March 2012, Mr Herrera convened a Special Convention of the TUCP where a new General Secretary was elected and new members were admitted to the organization.

796. The Government states that, in view of the conflicting claims of Mr Mendoza and Mr Herrera to the labour centre's presidency, the BLR conducted preventive conciliation–mediation conferences through the Single Entry Approach (SEnA), which led to arbitration proceedings.

797. As regards the alleged direct and prejudicial interference and impairment of the right of the workers to elect their representative through the assumption of the intra-union controversy by the BLR–DOLE without any complaint, the Government stresses that the initial intervention of the BLR was to call for a conciliation–mediation conference under the SEnA, an assistance that does not need to be initiated by the parties themselves or through a complaint. It is voluntary on the part of either parties to participate, and merely an attempt to afford the parties a venue and a process to resolve their differences with a third

party (DOLE) acting as facilitator. During the first conciliation conference conducted by the BLR on 28 March 2012, the parties were apprised of the proceedings and agreed that in case the conciliation–mediation proceedings would fail, arbitration proceedings pursuant to article 226 of the Labor Code, as amended, would commence to resolve the intra-union dispute. On 17 April 2012, during the second conciliation conference, the representative of Mr Mendoza moved to terminate the conciliation–mediation proceedings and commence arbitration proceedings. This is borne out by the enclosed minutes of the conferences. The Government points out that both parties submitted to the jurisdiction of the BLR and did not assail the same until after the BLR Order of 10 August 2012.

798. The Government also highlights that, as set out in the BLR Order, the escalation of the claims and counter-claims to the TUCP leadership, with both Mr Mendoza and Mr Herrera claiming the presidency and each having his own General Secretary, resulted in frictions between the two groups not only at the enterprise level struggle to gain dominance over the other but also in the functioning of the different tripartite bodies in various government agencies where the TUCP sits as workers' representative. There has been an exchange of recalls and objections with each group asserting to be the rightful representative of the TUCP in the government tripartite bodies. The division has created uncertainty on TUCP's representativeness. The subject controversy, given the recognized active engagement of the labour centre in social, political and economic concerns, has national implications thus compelling the BLR to intervene, pursuant to article 226 of the Labor Code, as amended, for a workable way forward to break the impasse. This intervention also becomes necessary as a requirement towards judicial determination, which can be triggered only through the article 226 proceedings and is permissible in cases of internal conflict.

799. The Government believes that, contrary to the alleged impairment of the workers' right to elect their representatives, BLR's ruling has in fact recognized the supremacy of the general membership on matters relating to the leadership, policies and major decisions of the organization, and held that the conflicting claims should be put to vote through secret balloting by the TUCP membership in a Special Convention duly called for the purpose. This is in the interest of fair play and of finally putting a closure to the leadership issue. Moreover, in a Resolution dated 28 May 2013 issued by the Office of the Secretary affirming the BLR Order, it was held that the controversy is an intra-union dispute involving the main pillars of the TUCP, thus, the logical arbiters for its conclusion are the members themselves through a duly conducted election. The conduct of secret balloting is a time-tested impartial and most democratic procedure, which is in accord with the principles of freedom of association under Convention No. 87 and will afford the TUCP members an opportunity to decide and exercise their sovereign will on the leadership issue.

800. Secondly, concerning the alleged disrespect and derogation of the TUCP Constitution through the BLR–DOLE decision directing the observance of the status quo ante and reversing the election of new TUCP officers during the Special Convention on 16 March 2012, the Government states that the constitution and by-laws of a union governs the relationship between and among the members of the union, define the rights, duties and obligations, powers, functions and authority of the officers and members, and determine the validity of acts done by any union officer or member. Section 9(2), article X of the 2007 TUCP Constitution enunciates the rule on succession in the event of a vacancy brought about by the enumerated conditions and nothing more, which compels the BLR to look into the resignation of Mr Mendoza as TUCP president and the claimed withdrawal of the same to establish the existence or non-existence of the vacancy in the presidency. The TUCP Constitution is silent on acceptance or withdrawal of resignation of its officers. It is on this premise that Mr Herrera argues that acceptance of the resignation is not required to make it effective. A scrutiny of the TUCP Constitution's wording, however, shows no indication or inference of immediate effectiveness of any resignation.

801. However, the Government indicates that section 9 of article X cannot obliviously be read as a stand-alone provision under the circumstances, which brought the organization to its present divided state with each group claiming to be the rightful officers. It was held that an unambiguous provision cannot be made to take effect without having to consider TUCP's principle of fostering a strong unified National Labor Center and developmental unionism. The spirit and purpose of the TUCP CBL has to be given meaning in its entirety and has to be read through in every provision. For it is settled principle in statutory construction that when the exact and literal import of a provision would lead to absurd or mischievous consequences, or would thwart or contravene the manifest purpose of the law, it should be construed according to its spirit and reason, disregarding or modifying so far as may be necessary, the strict letter of the law. Given the conflicting claims to the TUCP leadership, section 9 of article X has to be read in relation to the provisions of articles V to IX of the TUCP CBL which provides for the conduct of election in the event of vacancy in the positions of elected members of the Executive Board by reason of removal from office, resignation, permanent disability, failure to quality, or death. It also proclaims the Convention as the supreme authority followed by the General Council and the Executive Board. This is where the BLR Order took off when it ruled that the conflicting claims should be put to vote through secret balloting by the TUCP membership in a Special Convention duly called for the purpose.

802. Thirdly, with respect to the alleged unjustifiable restriction of new and reactivated labour federations of the TUCP from participating in the election of officers and leaders, the Government indicates that the BLR–DOLE Order directs the observance of status quo ante or the status prior to the contested resignation. Based on BLR records, there were 28 established member organizations of TUCP prior to the controversy. The claim that NUBE, NLU, PAFLU and NFL should be included considering that they were merely on an inactive status could not be sustained, since, prior to the controversy, both parties, being the incumbent officers, ceased to report said federations as member organizations of the TUCP, these federations did not question their non-inclusion in TUCP's reportorial documents submitted to the BLR, and thus, both parties, in the performance of their duties as officers of TUCP, logically conceded that said federations are no longer TUCP members.

803. Moreover, the Government states that the Special Convention of 16 March 2012 referred to by Mr Herrera could not be considered as duly held, since no due notice was sent to all member organizations. This led to a situation where, while a considerable number of member organizations were not able to attend by reason of lack of notice, non-member organizations participated in the deliberations without prior confirmation of their membership by the Executive Board in line with the provisions of section 4(b), article VIII in relation to sections 1, 2, and 3, article III of the TUCP Constitution. Thus, all proceedings that transpired during the Special Convention were deemed to have no binding effect on the entire TUCP membership.

804. Fourthly and lastly, as to the alleged premeditated action to split the TUCP into two groups in blatant derogation of the TUCP Constitution, the Government emphasizes that it does not take sides in the internal conflict within the TUCP and deals at arm's length with both groups until after the final determination of the leadership of the TUCP by the members themselves pursuant to its Constitution. Indeed, there is only one TUCP, and, pursuant to section 1, article V of its Constitution, the TUCP is founded on the principle that the members are above the officers, and the officers' authority, even their tenure in office, as well as the policy and major decision of the organization, are all passed upon by the membership through the Convention. Thus, to recognize a set of leaders through a mere reading of section 9 of article X alone, which definitely would not resolve the controversy, would run roughshod over the provision of section 1 of article V. Lastly, according to the Government, the names of the delegates and advisers for the Government, Employer and

Workers' sector reflected in the form for credentials of delegations for the 102nd Session of the 2013 ILC were based on the information provided by each participating organization. The DOLE, through the ILAB, relied in good faith on the representations, statements and information given by the nominating organizations and groups. Moreover, the DOLE Resolution affirming the BLR–DOLE Order of 10 August 2012 was issued only on 28 May 2013, whereas the submission to the Credentials Committee was made on 20 May 2013. Thus, corrections were made subsequently pursuant to the Resolution of 28 May 2013, that is, on the premise of the status quo ante where Mr Herrera is still TUCP General Secretary.

C. The Committee's conclusions

805. *The Committee notes that, in the present case, the complainant organization alleges that the Government interfered with the right of workers to elect freely their representatives by reversing the results of the elections of its officers. The Committee notes, in particular, the complainant's allegations that: (i) TUCP President, Democrito T. Mendoza submitted on 19 October 2011 a letter of resignation declaring that he resigned effective 1 November 2011, resignation which, in the absence of withdrawal, was approved on 9 November 2011 by the Executive Board; (ii) in accordance with section 9, paragraph 2, article X, of the TUCP Constitution, TUCP General Secretary, Ernesto F. Herrera succeeded Mr Mendoza and started discharging his duties as TUCP President; (iii) in January 2012, Mr Mendoza, pretending to still be TUCP President: (a) called for a General Council meeting on the same day as Mr Herrera; (b) convened a non-valid meeting which appointed TUCP Vice-President Victorino Balais as General Secretary; and (c) allegedly instructed his group to take physical occupancy of the TUCP headquarters; (iv) after the approval of a Special Convention by the General Council and the submission of formal notices to affiliates, the Special Convention took place on 16 March 2012, with the participation of all 16 original TUCP federations and ten reactivated or new federations; many foreign and international unions expressed support for Mr Herrera; the Convention elected 23 officers to the TUCP Executive Board and adopted amendments to the TUCP Constitution and a perpetual ban on Mr Mendoza and his group; (v) the BLR–DOLE initiated in April 2012* motu proprio *a case entitled "Intra Union Dispute at the Trade Union Congress of the Philippines (TUCP)", and issued, on 10 August 2012, a decision directing the observance of status quo ante (status prior to the contested resignation) pending the conduct of an election of a new set of TUCP officers; (vi) the decision was appealed by Mr Herrera to the Office of the Secretary of the DOLE pursuant to rule XI, section 16 of Department Order No. 40-03, series of 2003, as amended; (vii) in December 2012, in violation of the decision of the BLR–DOLE, Mr Mendoza's group called for a Convention, where Mr Mendoza relinquished his position, leading to the election of Victorino Balais as president; (viii) in its official correspondence of May 2013, the BLR–DOLE has unlawfully split the organization into two TUCP's (the TUCP–ITUC being represented by Mr Herrera and the TUCP being represented by Victorino Balais), and the preliminary list of delegates submitted by the Government to the 2013 ILC included names and positions that had not been submitted by Mr Herrera.*

806. *The Committee notes that the complainant therefore believes that the Government committed serious violations of trade union rights protected under Convention No. 87. In the complainant's view, the assumption of intra-union controversy initiated solely by the BLR–DOLE despite all the developments (Special Convention with election of officers) and without any complaint filed by interested parties amounted to direct and prejudicial interference and impairment of the rights of the workers to elect their representatives, and the decision of the BLR–DOLE directing the observance of status quo ante and reversing the election of new officers during the Special Convention violates both Convention No. 87 and the TUCP Constitution. Moreover, according to the complainant, the action of the*

Government to unlawfully split the TUCP into two groups in violation of the TUCP Constitution, is fomenting confusion and disunity among the ranks of workers and creates the impression of bias and partiality.

807. *The Committee also notes the information provided by the Government according to which: (i) in view of the divergent documents submitted to the BLR and the conflicting claims of Mr Mendoza and Mr Herrera to the TUCP presidency, the BLR conducted preventive conciliation–mediation conferences through the SEnA, which eventually led to arbitration proceedings; (ii) the BLR was compelled to intervene to find a way forward to break the impasse because the escalation of the claims and counter-claims to the TUCP leadership has created uncertainty on TUCP's representativeness and had resulted in frictions between the two groups not only at the enterprise level but also in the functioning of the different tripartite bodies in various government agencies where the TUCP sits as workers' representative, and because the article 226 proceedings can trigger a judicial determination; (iii) the initial intervention of the BLR was to call for a conciliation-mediation conference with a third party (DOLE) acting as facilitator (an assistance that does not need to be initiated by the parties themselves or through a complaint and where the participation of the parties is voluntary); (iv) during the first conciliation conference conducted by the BLR on 28 March 2012, the parties were apprised of the proceedings and agreed that in case that the conciliation–mediation proceedings would fail, arbitration proceedings pursuant to article 226 of the Labor Code as amended and its Implementing Rules as amended by Department Order No. 40 of 2003, would commence to resolve the intra-union dispute; (v) on 17 April 2012, during the second conciliation conference, the representative of Mr Mendoza moved to terminate the conciliation–mediation proceedings and commence arbitration proceedings; (vi) contrary to the alleged impairment of the workers' right to elect their representatives, the BLR decision recognizes the supremacy of the general membership on matters relating to the leadership and major decisions of the organization, since, after construing the TUCP Constitution according to its spirit and purpose and considering that the Special Convention had not been valid, it holds that the conflicting claims of the intra-union dispute should be put to vote through secret balloting by the TUCP membership in a Special Convention duly called for the purpose, i.e. a fair, impartial and democratic procedure; (vii) on 28 May 2013, a DOLE Resolution affirmed the BLR–DOLE decision of 10 August 2012, which had been appealed by the complainant, and declared the convention called by Mr Mendoza in December 2012 as invalid due to violation of the BLR–DOLE decision; (viii) as to the alleged premeditated action to split the TUCP into two groups, the Government does not take sides in the internal conflict within the TUCP and deals at arm's length with both groups until after the final determination of the leadership of the TUCP by the members themselves pursuant to its Constitution; and (ix) the names reflected in the form for credentials of delegations for the 2013 ILC were based on the information provided by each participating organization and were submitted to the Credentials Committee on 20 May 2013 (i.e. before the issuance of the DOLE Resolution), which subsequently led to corrections being made on the premise of the status quo ante where Mr Herrera was still TUCP General Secretary. The Committee also notes that the 2013 ILC Credentials Committee examined an objection filed by Mr Herrera concerning the nomination of a Workers' adviser and expected that the internal conflict within the TUCP which is in process of being resolved nationally will be definitively resolved in the near future.*

808. *The Committee observes that the present case relates to a conflict within a trade union organization. The Committee wishes to recall, from the outset, that it is not competent to make recommendations on internal dissentions within a trade union organization, so long as the Government did not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006,*

para. 1114]. In this regard, the Committee observes that the complainant organization alleges interference by the public authorities in the internal affairs of the trade union organization. The Committee will therefore limit its examination to this aspect of the case.

809. *As to the initiation by the Government of the dispute resolution proceedings without any complaint, the Committee observes that, according to the Government, the Government (BLR) initiated, as a first step, conciliation–mediation proceedings, which had been rendered necessary by the implications of the intra-union dispute both at the enterprise level and at national level, and in which the parties were free to participate or not. In this connection, the Committee recalls that, in cases of internal dissentions, it has invited governments to persevere with their efforts, in consultation with the organizations concerned, to put in place as soon as possible impartial procedures to enable the workers concerned freely to choose their representatives [see* ***Digest****, op. cit., para. 1120]. The Committee further notes that, according to the Government, the failure of the conciliation-mediation proceedings led to arbitration proceedings. It observes that the arbitrator in this case was appointed by the administrative authority (DOLE). The Committee recalls that, in cases of internal conflict, it has previously pointed out that judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling questions concerning the management and representation of the trade union federation concerned; and that another possible means of settlement would be to appoint an independent arbitrator to be agreed on by the parties concerned, to seek a joint solution to existing problems and, if necessary, to hold new elections [see* ***Digest****, op. cit., para. 1124]. In this regard, the Committee observes that, while the BLR–DOLE decision and the Government's reply state that both parties agreed at the first conciliation conference that, in the event of failure of the conciliation–mediation process, arbitration proceedings should commence to resolve the intra-union dispute, the complainant is silent on this matter and views the issuance of the BLR–DOLE decision as government interference.*

810. *With respect to the substance of the BLR–DOLE decision of 10 August 2012 directing the observance of the status quo ante pending the conduct of elections of new officers, the Committee reiterates that it has no competence to examine the merits of disputes within the various tendencies of a trade union. The Committee observes that the first judicial determination in the intra-union conflict occurred almost two years after Mr Mendoza's resignation letter, following a judicial appeal lodged by the complainant, through the issuance by the Court of Appeals in September 2013 of an injunction in favour of Mr Herrera and against the BLR–DOLE decision as affirmed by the DOLE (temporary restraining order (TRO)).*

811. *Furthermore, the Committee notes that, on 7 October 2013, the Court of Appeals issued a decision declaring that: (i) the BLR erred in holding that acceptance is necessary in order to make Mr Mendoza's resignation effective and that the vacancy created by the resignation must be submitted to the consent or acceptance of TUCP's general membership, given that this is clearly unwarranted by the express provisions of the TUCP constitution; (ii) Mr Herrera succeeded Mr Mendoza as TUCP president as he validly assumed the vacated position of President due to the resignation of Mr Mendoza; (iii) the BLR committed grave abuse of discretion in issuing the status quo ante order, and the BLR Order of 10 August 2012 is therefore annulled and set aside insofar as it relates to the issuance of the status quo ante order and the creation of an independent committee for the conduct of election of officers; (iv) Mr Herrera holds the position as TUCP President in a hold-over capacity until the general membership convenes and elects a new set of officers (the same is valid for the elective officers of the Board at the time of Mr Mendoza's resignation; Mr Herrera is, however, empowered to replace the appointive officers; the General Council may fill the vacant position of General Secretary; in the meantime, the President may appoint an Assistant General Secretary who may act as such); (v) the*

Special Convention of 16 March 2012 held by Mr Herrera, and thus the election of Mr Umali as General Secretary, are not valid for lack of evidence (for example, as to the members of the General Council, the total number of TUCP affiliates, the number of unions attending the Special Convention, etc.), and the BLR Order is therefore affirmed insofar as it relates to this matter; and (vi) for the purpose of ascertaining the composition of the General Council (especially the heads of the affiliated organizations), the BLR is directed to make a determination as to who are the member organizations of the TUCP, and Mr Herrera is directed to submit an updated list of member unions together with supporting documents to the BLR. The Committee requests the Government and the complainant to keep it informed as to the manner in which the Court of Appeals decision has been, and is being, applied. Furthermore, the Committee understands that, on 25 October 2013: (i) the complainant has filed a motion for partial reconsideration requesting that Mr Umali retain his position as General Secretary; and (ii) the Mendoza group has filed a motion for reconsideration against the Court of Appeals decision. The Committee also requests the Government to keep it informed of the judicial developments in relation to the motions for reconsideration filed by the parties, and firmly expects that the judicial proceedings will result in the final resolution of the TUPC leadership dispute in the very near future.

812. *Lastly, as regards the allegations that the Government may have acted to split the TUCP into two groups as reflected in the official correspondence and the submitted form for credentials of delegations for the 102nd Session of the ILC 2013, the Committee notes the consideration of the 2013 ILC Credentials Committee that the Government did not appear to have taken sides between the Mendoza group and the Herrera group as it nominated one Workers' adviser from both sides and the Workers' delegate from the ranks of another organization. Considering that, pending the resolution of the conflict, the Government attempted to deal, in terms of official correspondence and nominations to the ILC, with both factions in the same manner, the Committee will not pursue the examination of this specific allegation.*

The Committee's recommendation

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

The Committee requests the Government and the complainant to keep it informed as to the manner in which the Court of Appeals decision of 7 October 2013 has been, and is being, applied. The Committee also requests the Government to keep it informed of the judicial developments in relation to the motions for reconsideration filed by the parties, and firmly expects that the judicial proceedings will result in the final resolution of the TUCP leadership dispute in the very near future.

CASE NO. 2988

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

Complaint against the Government of Qatar presented by the International Trade Union Confederation (ITUC)

Allegations: The complainant alleges restrictions on the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing, to strike and bargain collectively, as well as excessive State control of trade union activities

814. The complaint is contained in a communication dated 28 September 2012 from the International Trade Union Confederation (ITUC).

815. The Government forwarded its observations in a communication dated 11 September 2013. Qatar has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

816. In its communication dated 28 September 2012, the ITUC alleges that today, migrant workers comprise roughly 94 per cent of Qatar's workforce, or about 1.2 million workers. That figure continues to rise as workers are recruited in vast numbers, largely from South Asia, to build infrastructure and stadia for the 2022 World Cup. Like many other migrant workers in the Gulf region, they face severe discriminatory policies and practices that violate their fundamental human and labour rights, including freedom of association. Even Qatari nationals have only limited rights in this regard.

817. The ITUC indicates that, together with the Building and Wood Workers' International Union (BWI), it has endeavoured to work with the Government of Qatar to improve this situation. In addition to several meetings with the Embassy of Qatar in Geneva, an ITUC delegation met with the Labour Minister in June 2012 to express its many concerns with regard to freedom of association and forced labour/trafficking. The ITUC indicates that while it has been informed that legal reforms that would address the concerns were forthcoming, from the Government's description of the reforms (and characterizations of them in the press), it was clear that they would not come close to affording full freedom of association to workers (whether citizens or migrants). The complainant further states that while the Government has offered to provide a draft of the proposed reforms to the ITUC for a review and comments, despite several requests, no copy of the proposed reforms was ever provided. The complainant indicates that it had since read in the press that some changes to the Labour Law have been adopted by the Cabinet, however, it has no information as to what these changes are and whether any reform was enacted.

818. According to the ITUC, the lack of freedom of association in Qatar is ultimately responsible for the deaths of numerous migrant workers, who face punishing working conditions, including long hours of intensely physical work in extreme heat, construction work without proper safety equipment or safe and appropriate building methods, and

squalid living conditions in which workers are packed into sweltering barracks with little if any ventilation. Some employers also cheat workers of their promised wages by paying a much lower wage, by making numerous illegal deductions, or by simply not paying at all. As a result of the lack of a collective voice, which could empower workers to remove themselves from dangerous situations and to bargain with their employer over working conditions, migrant workers face injuries or death.

819. The complainant considers that the Labour Law of Qatar of 2004 violates the principles of freedom of association and refers, in particular, to the following issues. Numerous categories of workers are precluded from forming or joining a union due to their exclusion from the scope of application of the Labour Law. First, the Law stipulates that none of its provisions apply to workers in the following categories (section 3):

(a) government/public workers;

(b) armed forces, police, and workers employed "at sea";

(c) casual work (defined as less than four weeks);

(d) domestic workers (including drivers, nurses, cooks, gardeners, and similar workers);

(e) family members of an employer; and

(f) agriculture and grazing workers.

820. Secondly, the Law forbids non-Qatari workers from membership in a labour organization ("workers' committee"), thus excluding more than 90 per cent of the total workforce in the country (section 116). In addition to the abovementioned categories of workers, section 116, which outlines the rights of employees to join unions, does not apply to enterprises employing less than 100 Qatari workers, and thus prohibits any worker employed by a small or medium-sized enterprise from joining a union.

821. The ITUC further indicates that pursuant to section 116 of the Law, workers in an establishment can form only a single "workers' organization"; multiple organizations are expressly forbidden. Additionally, all workers' organizations must affiliate to the "General Union of the Workers of Qatar".

822. The complainant further alleges that while the right to strike is technically established in section 120, the small segment of the workforce that could potentially strike (Qatari nationals) face restrictive conditions and a procedural framework that makes exercising that right nearly impossible. For example, workers in "vital public utilities", defined as to include "petroleum and gas-related industries, electricity, water, seaports, airports, hospitals and transportation" are barred from striking. The ITUC finds troubling the requirement of the approval by three-quarters of the general committee of the trade or industry to authorize a strike and the requirement of the Government's prior approval of the time and place. The complainant considers that these requirements are excessive and are likely to impede most strike activity. Also, requiring a strike to be carried out far from the company or during limited hours or limited duration makes the use of the strike limited, if not useless. By referring to a strike vote being held at the level of a trade or an industry, the Law calls into question whether strikes at the enterprise level are even permissible (or permissible only following a vote of the industrial-level union). Furthermore, the ITUC points out that even in sectors deemed to be essential, workers subjected to such restrictions should receive compensatory guarantees to safeguard their interests. By recognizing the unique nature of their employment, essential service workers must have corresponding benefits (such as a guarantee of not being locked out). No such provisions exist under Qatari legislation. Furthermore, strikes are limited only to industrial

disputes. The ITUC also considers that the Law is unclear as to whether an arbitration award, which is mandatory if the parties do not agree to a binding conciliation, is binding on the parties (sections 128–130). If that is the case, the ITUC doubts that a strike can ever be legal.

823. The complainant further alleges that section 127 of the Labour Law empowers the Government to regulate the rules and procedures of collective bargaining, the method of representation of the parties, and the content, scope, duration and means of reaching a collective agreement. It therefore considers that under the current legislation, there cannot be said to exist a legitimate collective bargaining process.

824. The ITUC also alleges that section 119 of the Law prohibits unions from engaging in a variety of activities and limits workers' ability to engage in the political sphere. The Law directly prohibits workers' organizations from engaging in "the exercise of any political or religious activities". It further forbids "preparing, printing or distributing any materials insulting to the State" or the status quo. The Ministry of Civil Service Affairs and Housing is empowered to dissolve any organization found to be in violation of these provisions. The ITUC points out that the defence and promotion of the interest of workers is inextricably tied to political freedom; in terms of economic and social policy, the right to criticize the government should be guaranteed.

825. Additionally, according to the ITUC, some union activities, including affiliations to international bodies, require the Government's approval. It refers, in particular, to the requirement of government approval in order to affiliate with Arab or international organizations.

826. The ITUC also refers to the absence of any form of protection for workers engaged in trade union activities.

B. The Government's reply

827. In a communication dated 11 September 2013, the Government explains that temporary resident migrant workers and their families represent the largest segment of the inhabitants of the State of Qatar and that it is keen to assume, within the framework of the ILO standards, its international and regional role to establish the foundations of justice and equality and to ensure security, stability and equal opportunity. According to the Government, it pays great attention to its resident workforce as the Qatar labour market draws to it about 71 per cent of the population of the country, with migrant workers accounting for 93 per cent of its economically active population. It recalls that a migrant workers population is an integral part of Qatari society which cannot be overlooked in drafting development plans or future visions. The Government further adds that in the last decades, Qatar has confronted the realities of migrant workers, their issues and challenges through the adoption of new frameworks dictated by the need to manage the migrant workforce and to provide comprehensive protection for this segment of society. A comprehensive legal system protects this workforce and preserves its rights while seeking to reconcile local practices and international standards. In this respect, the Government refers to the Constitution of the State of Qatar, which provides in its Article 30 that "the relation between workers and employers is based on social justice and is regulated by law" and in its Article 52 that "every person who is a legal resident of the State shall enjoy protection of his person and property as provided by law".

828. The Government indicates that Labour Act No. 14 of 2004 was promulgated to organize the relation between employers and workers and that this law has recognized many of the workers' rights and privileges, strengthened worker protection against occupational hazards, and provided compensation for occupational injuries and for a worker's minimum

rights to terminate his or her employment when he or she chooses to do so and to receive compensation for the period of employment, specifying that any measure contrary or voluntary abdication of these rights are null and void. Ministerial Decrees have been promulgated by the competent authorities to strengthen these rights. These Decrees deal with such issues as the work of the conciliation and arbitration committees for collective labour disputes; hours of work in open space during summertime; workers' organizations; and conditions and specifications for adequate housing.

829. The Government informs that it has concluded 31 bilateral agreements with labour exporting countries. It adds that the Labour Ministry is one of the main actors involved in following the situation of migrant workers, supervising the application of occupational health and safety measures, issuing warnings, reporting violations, and settling disputes arising between labour providing agencies and employers. It assumes these tasks through its departments of employment, labour inspection and labour relations, together with the human rights department within the Ministry of Interior, the National Human Rights Committee and the Qatari Foundation to Combat Human Trafficking. According to the Government, this reflects the State's concern and the priority given to the protection of migrant workers' rights, which are part of human rights.

830. The Government points out that the complaint submitted by the ITUC and BWI does not contain any reference to any prior complaint or grievance by any organization or local workers' committee directly affected by the matter raised in the complaint and that the claims contained therein are not founded on any grievance or demand from a local workers' organization, officially or unofficially, nor are based on facts. The Government further considers that for a complaint regarding violations of labour and union rights to be admissible it must be clearly articulated in a petition, be well documented and be based on comprehensive and reliable information. According to the Government, it is not sufficient to interpret the legislation in force in a country to conclude to violations of the workers' rights. The Government insists that the claims submitted by the complainants are hearsay and dangerous as they fail to include any document or list of names which could provide clear proof of the alleged facts; any examples of cases where employers have paid workers less than the promised wages; any document or list of names providing clear proof of cases of workers' injuries or deaths, including police reports or records of death or injury; and any individual grievances from workers or members of their families which could assist in determining the truth. The Government further considers that to be examined by the Committee, a complaint must be devoid of any apparent political connotation. The Government considers that in the present case, in light of the above, it can only be concluded that the complaint is malicious and seeks to undermine the reputation of the State as it prepares to host the World Cup in 2022.

831. In respect of the allegations of restrictions on the establishment of trade unions, the Government indicates that considering the importance of trade unions, in order to enable workers to freely exercise this right, the Labour Law has been promulgated by Act No. 14 of 2004. To allow such organizations to defend workers' interests and rights in improving conditions of work, negotiating with the employers, etc., this Law dedicates a special chapter to trade union organizations. These organizations have a complete freedom of action in labour matters. The Government adds that the proportion of migrant workers in the overall workforce, which could influence the social demographics, must not be disregarded.

832. As regards the allegation of the absence of protection of trade union activity, the Government states that section 122 of the Labour Law prohibits an employer from compelling a worker to join – or not to join – any labour organization or not to comply with any of its Decrees and section 145 punishes by imprisonment and a fine any violation of this provision. Furthermore, workers have the right to publish their rules of procedure

and draft statutes. All of the above demonstrates that the protection of trade union action is guaranteed by the legislation.

833. Concerning the allegation of the effective absence of the right to strike, the Government argues that when employers and workers fail to reach an amicable settlement, section 130 of the Labour Law guarantees the right to strike. It further indicates that, as the right to strike is a means to fulfil workers' demands, rules and conditions had to be established for the exercise of this right, especially if they help to reach the desired goals and ensure workers' safety and protect public property. Practical experience has demonstrated that an intervention by the relevant authorities is always on the side of workers as it allows them to settle a dispute and to grant them the rights before strike action is undertaken. Applying these rules and conditions does not mean that the Ministry of Labour or the Ministry of Interior are seeking to prevent workers from exercising their right to strike as guaranteed by the Law, rather their aim is to enable this right. The Government considers that these rules and conditions are in compliance with the provisions of the relevant ILO Conventions, which grant each country the right to decide in which essential sectors strikes may be prohibited due to their importance and potential impact on public property and persons.

834. Regarding the claim made by the complainant on the absence of collective negotiations, the Government emphasizes that section 127 of the Labour Law provides for the right of employers and workers to negotiate collectively and to conclude collective agreements on all work-related matters, with the least interference by the State authorities. The Government indicates that several departments and State authorities supervise the collective bargaining process: the Labour Ministry, through its various organs, tracks the implementation of the rules governing joint agreements and the amicable settlement of labour disputes; the human rights department in the Ministry of Interior is also involved in negotiations with employers and workers helping them to reach an amicable solution between the parties; the National Committee for Human Rights is responsible for the coordination between the parties to settle a dispute and to enable workers to obtain their rights; and, the Qatar Foundation to Combat Human Trafficking coordinates with the relevant authorities to enable workers to obtain, negotiate and secure their rights. Positive endeavours in the field by these organs and departments confirm the existence of constructive collective negotiations in the country.

835. The Government further indicates that the Labour Law does not contain any restrictions or conditions which would impede the exercise of trade unions' duties, rather such organizations are granted full authority to draft their rules and enjoy independence in performing their activities and mandate, namely the protection and defence of workers' interests and rights.

836. The Government adds that other guarantees are available in the country for the protection of workers' individual and collective rights. The Ministry of Labour has established mechanisms providing workers with the necessary protection, such as hotlines where qualified staff receive workers' complaints and queries and take prompt actions. A dedicated email account has been created to receive questions and complaints; these are quickly responded to. The Ministry, in cooperation with the Supreme Council of the Judiciary, has opened its office on the Court's premises to follow up and facilitate litigation procedures between workers and employers; it provides free of charge services. The Ministry, in cooperation with the embassies in Qatar of labour exporting countries, examines problems faced by their nationals with the view to finding appropriate solutions and helping these workers to have their rights respected. Finally, the Government indicates that the Human Rights Department in the Ministry of Interior is responsible for the protection of the rights of migrant workers and helps them to submit complaints. It deals with workers' complaints and grievances arising out of problems in the work environment

between employers and migrant workers. In doing so, it is operating against the background of the Labour Law, the Law organizing the admission and departure of incoming workers, their residence and terms of guarantee; Criminal Procedure Law and other pertinent legislation.

C. The Committee's conclusions

837. *The Committee notes that the ITUC's allegations relate to several provisions of the Labour Law of 2004, which the complainant considers to be in violation of freedom of association and collective bargaining rights. While noting that the Government of Qatar has not ratified Conventions Nos 87 or 98, the Committee nevertheless recalls that when a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 15]. The Committee recalls that freedom of association is one of the primary safeguards of peace and social justice. The Committee expresses its concern at the seriousness of the allegations of violation of freedom of association in Qatar.*

838. *The Committee notes that in the Government's view, for a complaint regarding violations of labour and union rights to be admissible it must be clearly articulated in a petition, be well documented and be based on comprehensive and reliable information. The Government is of the view that it is not sufficient to interpret the legislation in force in a country to conclude to violations of the workers' rights. The Government refutes the complaint submitted by the ITUC which it states does not contain any reference to any prior complaint or grievance by any organization or local workers' committee directly affected by the matter raised in the complaint and that the claims contained therein are not founded on any grievance or demand from a local workers' organization, officially or unofficially, nor are they based on facts. The Government further considers that to be examined by the Committee, a complaint must be devoid of any apparent political connotation and considers that, in the present case, the complaint is malicious and seeks to undermine the reputation of the State as it prepares to host the World Cup in 2022.*

839. *The Committee recalls in this respect that it is precisely within its mandate to examine whether, and to what extent, satisfactory evidence is presented to support allegations of infringements of freedom of association. Furthermore, the mandate of the Committee consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Convention and in promoting respect for trade union rights in law and in fact [see* ***Digest****, op. cit., paras 9, 6 and 3]. Where national laws, including those interpreted by the high courts, violate the principles of freedom of association, the Committee has always considered it within its mandate to examine the laws, provide guidelines and offer the ILO's technical assistance to bring the laws into compliance with the principles of freedom of association, as set out in the Constitution of the ILO and the applicable Conventions [see* ***Digest****, op. cit., para. 11]. The Committee will therefore proceed to examine the legislative provisions, which, according to the complainants, violate freedom of association and collective bargaining rights.*

840. *The Committee notes the position of the Government, according to which the Labour Law sufficiently protects the right of workers to establish trade unions to defend their interests and for the purpose of representation in collective bargaining with employers. According to the Government, the Law also provides for the right of employers and workers to negotiate collectively and to conclude collective agreements on all work related matters, with the least interference by the State authorities. The ITUC alleges, however, that the Law jeopardizes the right of workers, without distinction whatsoever, to establish and join*

trade unions of their own choosing. It refers, in this respect, to sections 3 and 116 of the Law, which read as follows:

Section 3

Except as otherwise provided for in any other law, the provisions of this law shall not apply to the following categories:

1. *The employees and workers of the ministries and other governmental organs, public institutions, corporations and companies which are established by Qatar Petroleum by itself or with others, and the workers whose employment affairs are regulated by special laws.*
2. *The officers and members of the armed forces and police and the workers employed at sea.*
3. *The workers employed in casual work.*
4. *The persons employed in domestic employment such as drivers, nurses, cooks, gardeners and similar workers.*
5. *Working members of an employer's family. These are the wife, ascendants and descendants who are residing with and wholly dependent on him.*
6. *The workers employed in agriculture and grazing other than the persons employed in the agricultural establishments processing and marketing their own products or those who are permanently employed in the operation or repair of the necessary agricultural mechanical appliances.*

The provisions of this law or any part thereof may, by a resolution of the Council of Ministers upon the recommendation of the Minister, be applied to categories 3, 4, 5 and 6 referred to in this section.

Section 116

Workers working in an establishment where the number of Qatari workers is not less than one hundred workers may form a committee from amongst themselves to be named "the workers' committee" and more than one committee in the establishment may not be formed.

Workers' committees in the establishments engaged in one trade or industry or similar or interrelated trades or industries are entitled to form a general committee from amongst themselves to be named the General Committee for the Workers of Trade or Industry.

General committees of the workers of the various trades and industries may form amongst themselves a general union to be named the "General Union of the Workers of Qatar".

Membership in the two committees referred to and in the General Union of the Workers of Qatar shall be confined to the Qatari workers. The Minister shall specify the conditions and procedures for the formation of the workers' organizations referred to and the membership therein and the way of carrying out their business and the interrelated and similar trades and industries.

841. *The Committee recalls that Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters, and the words "without distinction whatsoever" used in this Article mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality, political opinion, etc., not only to workers in the private sector of the economy, but also to civil servants and public service employees in general [see* ***Digest****, op. cit., para. 209]. To illustrate the above general principle, the Committee draws the Government's attention to the following paragraphs of the above-cited Digest:*

216. All workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing.

...

219. Public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests.

220. Public employees (with the sole possible exception of the armed forces and the police, by virtue of Article 9 of Convention No. 87) should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members.

...

229. Civilians working in the services of the army should have the right to form trade unions.

...

241. Agricultural workers should enjoy the right to organize.

...

255. All workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the right to establish and join organizations of their own choosing.

...

267. Domestic workers are not excluded from the application of Convention No. 87 and should therefore be governed by the guarantees it affords and have the right to establish and join occupational organizations.

842. *With regard to the restriction on the right to organize based on nationality, as it appears to be the case pursuant to the first sentence of paragraph 4 of section 116 of the Law, the Committee considers that such restriction prevents migrant workers from playing an active role in the defence of their interests, especially in sectors where they are the main source of labour. The right of workers, without distinction whatsoever, to establish and join organizations implies that anyone legally residing in the country benefits from trade union rights without any distinction based on nationality. The Committee further recalls the resolution concerning a fair deal for migrant workers in a global economy adopted by the ILO Conference at its 92nd Session (2004) according to which "[a]ll migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour, cover all migrant workers, regardless of status" [para. 12].*

843. *With regard to collective bargaining rights, the Committee recalls that only armed forces, the police and public servants engaged in the administration of the State may be excluded from their application.*

844. *In light of the above, the Committee requests the Government to take the necessary measures in order to ensure that, with the only possible abovementioned exceptions, all workers, without distinction whatsoever, may enjoy freedom of association and collective bargaining rights. In particular, the Committee requests the Government to consider amending section 3, or, with regard to the categories of workers mentioned under subsections 3–6, taking the necessary measures for the adoption of a Council of Minister's resolution as referred to in the last paragraph of that section. The Committee further urges the Government to eliminate the restriction placed on the organizing rights of migrant*

workers by repealing the first sentence of paragraph 4 of section 116 of the Labour Law, which limits organizing rights to Qatari workers.

845. *The Committee also notes that according to section 116, paragraph 1, a workers' committee can only be established at enterprises employing not less than 100 Qatari workers. Recalling that the workers' right to organize should not be dependent on the size of the enterprise, or the number of workers employed by it, and understanding that with the predominantly migrant labour force, the number of enterprises where over 100 Qataris are employed may be very few, especially as regards small and medium-sized enterprises, the Committee urges the Government to take the necessary measures to repeal this provision without delay.*

846. *The Committee further notes that, as per the ITUC's allegation, according to section 116, only one workers' committee can be formed in an establishment, which can create general committees at the level of trade or industry, which, in turn can form a general union under the name of the General Union of the Workers of Qatar. The Committee recalls in this respect that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility to create – if the workers so choose – more than one workers' organization per enterprise. Furthermore, unity within the trade union movement should not be imposed by the State through legislation because this would be contrary to the principles of freedom of association [see* ***Digest****, op. cit., paras 315 and 321]. The Committee therefore urges the Government to take the necessary measures without delay to amend section 116 so as to bring it into conformity with the abovementioned principle.*

847. *The Committee also requests the Government to provide a copy of the procedures regulating the formation, membership and activities of workers' organizations, adopted pursuant to the last sentence of section 116 of the Law.*

848. *With regard to the allegation that the Labour Law effectively denies the right to strike, the Committee notes that according to the Government, the Law guarantees the right to strike. The Government adds, however, that as the right to strike is a means to fulfil workers' demands, rules and condition must be established for the exercise of this right to assist in reaching the desired goals, to ensure workers' safety and to protect public property. It further indicates that the authorities are always on the side of workers as such interventions allow settling of disputes before resorting to a strike action. Applying these rules and conditions does not mean that the Ministry of Labour or the Ministry of Interior are seeking to prevent workers from exercising their right to strike as guaranteed by the Law, rather it seeks to enable this right. The Government considers that these rules and conditions are in compliance with the provisions of the relevant ILO Conventions, which grant each country the right to decide in which essential sectors strikes may be prohibited due to their importance and potential impact on public property and persons*

849. *The Committee notes the following sections of the legislation:*

Section 120

The workers may go on strike if amicable settlement of the dispute between them and the employer becomes impossible in accordance with the following measures:

1. *Approval by three-quarters of the General Committee of the workers of the trade or industry.*
2. *Giving to the employer a period of not less than two weeks before commencing the strike and securing approval of the Ministry [Ministry of Civil Service Affairs and Housing] after coordination with the Minister of Interior Affairs in respect of the time and place of the strike.*

3. Provided that there is no detriment to the property of the State and of the individual and their security and safety.

4. Prohibition of the strike in vital public utilities such as petroleum and gas-related industries, electricity, water, seaports, airports, hospitals and transportation.

5. Non-resort to strike before the amicable settlement between the workers and employer by conciliation or arbitration in accordance with the provisions of this law becomes impossible.

Section 129

If any dispute arises between the employer and some or all of his workers, the two parties to the dispute shall try to settle it between themselves and if there is a joint committee in the establishment, the dispute shall be referred to it for settlement.

If the two parties fail to settle the dispute the following steps shall be taken:

1. The workers shall submit their complaint or claim in writing to the employer with a copy thereof to the department.

2. The employer shall reply in writing to the complaint or claim of the workers within a week from his receiving the same and shall send a copy of the reply to the department.

3. If the reply of the employer does not lead to the settlement of the dispute, the department shall try to settle the dispute through its mediation.

Section 130

If the mediation of the department does not lead to the settlement of the dispute within 15 days from the date of the employer's reply, the department shall submit the dispute to a conciliation committee for its decision thereon.

The conciliation committee shall be formed of:

1. A chairperson to be appointed by a decision of the Minister.

2. A member to be nominated by the employer.

3. A representative member of the workers to be nominated in accordance with the provisions of the second paragraph of the section.

The committee may be assisted by consultation with any of the specialists before deciding on the dispute and shall issue its decision on the dispute within a week from the date of its submission thereto.

The decision of the committee shall be binding on the two parties to the dispute if the parties had agreed in writing to referring the dispute to the committee before its meeting to decide on the dispute and if there is no such an agreement in this respect the dispute shall be referred to an arbitration committee within 15 days and the arbitration shall be mandatory for the two parties.

850. *As concerns section 120 of the Law, the Committee recalls that the conditions that have to be fulfilled under the Law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations [see **Digest**, op. cit., para. 547]. With regard to the majority vote required for the calling of a legal strike, the Committee considers that generally, the requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises [see **Digest**, op. cit., para. 556]. In addition, the right of the Ministry of Civil Service Affairs and Housing to determine the time and the place of the strike could further excessively hinder the exercise of the right to strike.*

851. *With regard to the prohibition of strike action in "vital public utilities", such as petroleum and gas-related industries, electricity, water, seaports, airports, hospitals and transportation, the Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the*

*name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) [see **Digest**, op. cit., para. 576]. It further recalls that it has previously considered that the following do not constitute essential services: the petroleum sector, ports, transport generally, airline pilots, production, transport and distribution of fuel [see **Digest**, op. cit., para. 587]. Moreover, even within essential services, certain categories of employees, such as hospital labourers and gardeners, should not be deprived of the right to strike [see **Digest**, op. cit., para. 593]. However, 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. 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., paras 607 and 610]. The Committee therefore uges the Government to take the necessary measures without delay to amend section 120 so as to ensure respect for the principles enunciated above.*

852. *The Committee notes that, as per the complainant's allegation, the objective of a strike is limited to disputes between an employer and his/her employees. It recalls in this respect that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers. Furthermore, organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living. 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 526, 527 and 538]. The Committee therefore requests the Government to take the necessary measures in order to ensure that workers' organizations are able to express, if necessary, through strikes or protest actions, in a broader context than currently provided for in section 120, their views as regards economic and social matters affecting their members' interests.*

853. *With regard to the ultimate recourse, in section 130, to a procedure of compulsory arbitration, the Committee recalls that the legislation which provides for voluntary conciliation and arbitration in industrial disputes before a strike may be called cannot be regarded as an infringement of freedom of association, provided recourse to arbitration is not compulsory and does not, in practice, prevent the calling of the strike. In as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term [see **Digest**, op. cit., paras 549 and 565]. The Committee requests the Government to take the necessary measures to amend section 130 so as to ensure that compulsory arbitration to end a collective labour dispute and a strike is possible only 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**, op. cit., para. 564].*

854. *The Committee notes the complainant's allegation that in the case of essential services, workers whose right to strike is restricted have no corresponding compensatory benefits such as a guarantee of not being locked out. The Committee recalls that employees deprived of the right to strike because they perform essential services must have appropriate guarantees to safeguard their interests, including a corresponding denial of the right of lockout, provision of joint conciliation procedures and where, and only where, conciliation fails, the provision of joint arbitration machinery [see **Digest**, op. cit., para. 600]. The Committee therefore expects that, where restrictions are placed on the right to strike in essential services and the industrial dispute is being dealt with through conciliation and arbitration, the employer is also restricted with respect to lockout.*

855. *With regard to the prohibition of certain activities to be carried out by workers' organizations, the Committee notes section 119 of the Labour Law, according to which,*

> *Workers' Organizations are prohibited from the following:*
>
> *1. The exercise of any political or religious activities.*
>
> *2. Preparation, printing or distributing any materials insulting to the State or the Government or the status quo thereof.*
>
> *3. Entering into any financial speculations of whatsoever nature.*
>
> *4. Accepting of gifts or endowments except with the approval of the Ministry.*
>
> *The Minister may dissolve any organization if it commits any of the foregoing prohibited matters or works outside the purpose.*

856. *As to the political activities, the Committee recalls that while trade union organizations should not engage in political activities in an abusive manner and go beyond their true functions by promoting essentially political interests, provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives are contrary to the principles of freedom of association. Furthermore, a general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice. Trade union organizations may wish, for example, to express publicly their opinion regarding the Government's economic and social policy [see **Digest**, op. cit., paras 500, 502 and 503]. The Committee further recalls that the right to express opinions without previous authorization through the press is one of the essential elements of the rights of occupational organizations and that the freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the Government's economic and social policy [see **Digest**, op. cit., paras 156 and 157]. With regard to the need to seek the Ministry's approval before accepting gifts or endowments, the Committee considers that trade unions should not be required to obtain prior authorization to receive international financial assistance in their trade union activities [see **Digest**, op. cit., para. 743]. Finally, with regard to the right of the Minister to dissolve a workers' organization, the Committee emphasizes that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association and that cancellation of a trade union's registration should only be possible through judicial channels [see **Digest**, op. cit., paras 683 and 687]. The Committee therefore urges the Government to take the necessary measures without delay in order to amend section 119 so as to bring it into conformity with the principles above.*

857. *The Committee further notes that pursuant to section 123 of the Law, "the General Union of the Workers of Qatar may, after approval of the Ministry, join any Arab or international organizations working in the field of workers organizations". The Committee recalls that a workers' organization should have the right to join the federation and confederation of its own choosing, subject to the rules of the organizations concerned, and without any previous authorization. It is for the federations and confederations themselves to decide whether or not to accept the affiliation of a trade union, in accordance with their own constitutions and rules [see* ***Digest****, op. cit., para. 722]. The Committee therefore urges the Government to take the necessary measures without delay to amend section 123 of the Law accordingly.*

858. *The Committee also notes the complainant's allegation that the Labour Law does not provide for any form of protection for workers engaged in trade union activities. While taking due note of the Government's opinion to the contrary, the Committee regrets to note that with the exception of section 122, which provides that an "employer shall not compel the worker to join or not to join any of the workers' organizations or to refrain from implementing their decisions", and section 144 setting out the penalties for the violation of section 122 consisting of imprisonment for a period not exceeding one month and/or a fine of not less than 2,000 Qatari riyals (QAR) and not exceed QAR6,000, there appears to be no other provisions referring to the rapid and effective protection against acts of anti-union discrimination and interference in trade union activities, which are necessary to ensure freedom of association in practice. The Committee is thus bound to emphasize the need to adopt specific legislative provisions in relation to anti-union discrimination and interference. The Committee would refer, in particular, to the need to ensure protection against the following acts: (1) making the employment of a worker subject to the conditions that he or she shall not join a union or shall relinquish trade union membership; or (2) causing the dismissal of, or otherwise prejudicing workers, by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours. The Committee considers that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial. Furthermore, where legislation does not contain specific provisions for the protection of workers' organizations from acts of interference by employers and their organizations, it would be appropriate for the Government to examine the possibility of adopting clear and precise provisions ensuring the adequate protection of workers' organizations against these acts of interference [see* ***Digest****, op. cit., paras 820 and 860]. The Committee urges the Government to take the necessary measures without delay to adopt specific legislative provisions to that end.*

859. *In light of the above, the Committee requests the Government to initiate without delay a labour reform, and expects that this process will include the full participation of the social partners and that any new legislative provisions will be based on the principles enunciated above. It requests the Government to keep it informed of all measures taken or envisaged in this respect and reminds it that it may avail itself of the technical assistance of the Office.*

860. *Finally, the Committee notes the complainant's allegation that section 127 of the Labour Law empowers the Government to regulate the rules and procedures of collective bargaining, the method of representation of the parties, and the content, scope, duration and means of reaching a collective agreement and thus undermines the existence of a collective bargaining process. The Committee notes that the text of this provision reads as follows:*

The employers and workers have the right to conduct collective negotiations and conclude joint agreements on all matters related to the work.

The Minister shall issue a Decision on the regulation of the rules and procedures of collective negotiation and the method of representation of the parties therein and the rules regulating the joint agreements, so as to [provide for the] contents, scope, the means of acceding them, the duration and interpretation thereof and the disputes which may arise from its implementation.

861. *The Committee requests the Government to provide a copy of the Decision to which reference is made in section 127 of the Labour Law and to indicate the manner in which this is applied in practice.*

The Committee's recommendations

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

(a) The Committee urges the Government to take the necessary measures without delay in order to amend the Labour Law (in particular through the revision of sections 3, 116, 119, 120, 123 and 130 and adoption of further enabling provisions) in accordance with the principles enunciated in its conclusions so as to give effect to the fundamental principles of freedom of association and collective bargaining. It expects that this labour reform process will include the full participation of the social partners. The Committee requests the Government to keep it informed of all measures taken or envisaged in this respect and reminds it that it may avail itself of the technical assistance of the Office.

(b) Observing the Government's indication that migrant workers account for 93 per cent of Qatar's economically active population, the Committee urges the Government to eliminate any restrictions placed on the freedom of association rights of migrant workers.

(c) The Committee requests the Government to provide:

- ***a copy of the procedures regulating the formation, membership and activities of workers' organizations, adopted pursuant to the last sentence of section 116 of the Law; and***
- ***a copy of the Decision to which reference is made in section 127 of the Labour Law and to indicate the manner in which this is applied in practice.***

CASE NO. 2713

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 National Union of Teachers in Registered Schools (SYNECAT)

Allegations: The complainant organization alleges various acts of harassment against its General Secretary and interference by the authorities in its activities

863. 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 1279–1289, approved by the Governing Body at its 316th Session (November 2012)].

864. The Government provided part of the information requested in a communication dated 28 January 2013. The complainant provided a response in a communication dated 15 April 2013.

865. At its November 2013 meeting [see 370th Report, para. 11], the Committee noted the Office visited the country for a technical mission in July 2013 to gather relevant information on the case.

866. 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

867. In its previous examination of the case in June 2011, the Committee made the following recommendations [see 365th Report, para. 1289]:

(a) The Committee once again 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 four 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 [see 362nd Report, 360th Report, 359th Report and 356th Report, para. 5]. The Committee notes with regret that the Government continues to fail to comply, despite the assurances given to the Chairperson of the Committee at a meeting held in June 2011, and urges the Government to be more cooperative concerning this case.

(b) The Committee, recalling the principle of the inviolability of trade union premises and property, and in the absence of any reply from the Government, once again requests the latter to provide its observations on the allegations relating to the forcible entry by the police onto the SYNECAT premises, and to indicate whether the action taken by the police was based on a judicial warrant.

(c) The Committee urges the Government to investigate, without delay, the allegations concerning the suspension of the SYNECAT General Secretary from his teaching functions following a strike and the retention of his salary for a period of 36 months, to communicate the outcome of the investigations and, if it is found that the union official in question was suspended due to his exercise of legitimate trade union activities, to ensure that the salary arrears owed to him are paid in full.

(d) The Committee once again requests the Government to provide its observations on the allegations of harassment of the SYNECAT General Secretary without delay, and to report on the current situation and on the action taken regarding the matter referred to the Gombe higher court, which resulted in him receiving a summons.

(e) The Committee requests the Government to accept a high-level mission to discuss all the complaints pending before the Committee concerning the Democratic Republic of the Congo.

B. The Government's reply

868. In a communication dated 28 January 2013, the Government indicates that Mr Jean Bosco Puna Nsasa, General Secretary of the National Union of Teachers in Registered Schools (SYNECAT), who alleges that he has been the victim of harassment, deserted his post as a French teacher at the Notre Dame de Fatima Institute in Kinshasa, where he had been posted. He is reported to have accumulated unjustified absences of over 155 days during the 2009–10 and 2010–11 school years. The Government emphasizes that the Institute adopted an indulgent attitude in punishing him so belatedly, as the rules in schools in the catholic network classify 15 days of unjustified absence over a school year as "desertion". With regard to the allegations of the withholding of his salary for 36 months, the Government indicates that, following his posting, it was the responsibility of the Notre Dame de Fatima Institute to make the necessary arrangements for the payment of his salary with the Teachers' Pay Supervisory Service (SECOPE). However, according to the Government, Mr Puna expressed the wish to make the arrangements himself for his pay and it was agreed to provide him with his assignment order so that the necessary measures could be taken with the SECOPE, thereby relieving the Institute of its responsibility in that respect.

869. Finally, the Government adds that SYNECAT is experiencing internal conflict between a faction led by the former president of the organization, Mr Malasi, and the faction led by Mr Puna. The first of these factions is reported to have taken legal action against Mr Puna's faction.

C. The complainant's response

870. The complainant provided a response to the Government's reply in a communication dated 15 April 2013. SYNECAT indicates that the punishment inflicted on Mr Puna for "desertion" was after the organization's congress in April 2009 and was an unjustified punishment handed down on the instructions of the Ministry of Primary, Secondary and Vocational Education. Moreover, with regard to the sanction for "desertion", SYNECAT expresses surprise that the direct manager of employees can allow an absence of 155 days to be built up by an employee before issuing a sanction. The complainant alleges that Mr Puna's absences during the school years were authorized by his direct superior, as explicitly indicated by a letter of the Ministry of the Public Service. SYNECAT, recalling that the SECOPE pay system is automatic and is not the responsibility of individuals, and observing that Mr Puna has not received any remuneration for 60 months (that is, two months after his posting in November 2008), concludes that the situation is the result of an instruction issued by the Ministry of Primary, Secondary and Vocational Education.

871. Finally, SYNECAT adds that there has been no legal action to challenge its congress held in April 2009, during which a national committee was elected under the leadership of its General Secretary, Mr Puna. According to the complainant, Mr Malasi, who was removed from union office by a congress, is being used by the political authorities, as demonstrated by his appointment as a district commissioner.

D. The Committee's conclusions

872. *The Committee notes with interest the Government's acceptance of a technical assistance mission by the International Labour Office to gather information on the various cases that the Committee has been examining for many years, without any real progress being made in giving effect to its recommendations. The Committee notes the report of the technical assistance mission (annexed to the present report) and welcomes the new spirit of collaboration shown by the Government. It hopes that its recommendations will be given effect in the same spirit.*

873. *The Committee recalls that the present case concerns allegations of the interruption of the congress of the complainant organization, the National Union of Teachers in Registered Schools (SYNECAT), by police forces in April 2009 and acts of harassment against the General Secretary of the union since then (suspension of his pay, and punishment for "desertion").*

874. *The Committee notes the elements provided in reply by the Government in January 2013 and the response by the complainant organization in a communication in April 2013. The Committee also notes the additional information provided to the mission by the various parties to the present case. However, the Committee observes that certain points raised by the mission required time for the Government to provide adequate replies, which have not yet been supplied to the Office by the Government.*

875. *The Committee notes that, according to the complainant, its activities are still subject to interference by the authorities. It reports that the Ministry of Primary, Secondary and Vocational Education is continuing to work with a committee of the dissident union led by its former president, who was removed from office in March 2008, and whose position was abolished by the extraordinary congress of the union held in April 2009. In this regard, the Committee notes the general report of the union's extraordinary congress, held in April 2009, which reports the election of a new national committee under the leadership of a General Secretary (Mr Puna) and two Deputy General Secretaries (Mr Tshimbalinga Kasanji and Mr Nguizani Za Makiona), and which contains the indication that the congress was opened and closed by a representative of the Ministry of Employment, Labour and Social Welfare. The Committee further notes the notarized document dated 16 May 2013 of the Chancellor's Office certifying the submission to the authorities of the general report of the extraordinary general congress of SYNECAT in 2009. The Committee observes that the existence of an internal conflict within SYNECAT between a faction led by Mr Malasi and the one led by Mr Puna is confirmed both by the Government and by the representative of the sub-provincial coordination office for registered catholic schools of Lukunga, whom the mission met.*

876. *The Committee recalls that in the event of internal conflicts within a union, and particularly when two executive committees each proclaim themselves to be the legitimate one, the dispute should be settled by the judicial authority or an independent arbitrator, and not by the administrative authority [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1121]. As there does not appear to have been a judicial ruling on the case, the Committee requests the Government to indicate whether the national committee elected by the extraordinary*

congress in April 2009 is recognized by the authorities as representing SYNECAT and, if so, whether its leaders participate in consultations and negotiations in the sector.

877. *With regard to the allegations of the intervention by the police forces during the April 2009 congress of SYNECAT, and in the absence of information from the Government on this point, the Committee once again recalls the principle of the inviolability of trade union premises and assets and urges the Government to ensure compliance in future with the principle that the public authorities may not insist on entering union premises without prior authorization from the union or without having obtained a legal warrant to do so.*

878. *The Committee also notes the complainant's allegations that the Government refuses to deduct the union dues of the members of the organization at source. In that respect, the Committee, recalling that the deduction of trade union dues by employers and their transfer to trade unions is a matter which should be dealt with through collective bargaining between employers and all trade unions without legislative obstruction [see **Digest**, op. cit., para. 481], invites the Government and the complainant organization to negotiate arrangements for the deduction at source of the union dues of teachers who are members of the organization. The Committee requests the Government to keep it informed of any developments in this regard.*

879. *Moreover, the Committee notes with concern the information provided to the mission by the complainant concerning the personal situation of the General Secretary of SYNECAT, Jean Bosco Puna. The Committee notes in particular the allegation that he was the target of an attempted murder in March 2013, during which his wife is reported to have been seriously wounded, and that no investigation is reported to have been opened yet by the police despite the lodging of a complaint. The Committee recalls that, in the event of assaults on the physical or moral integrity of union leaders or members, 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**, op. cit., para. 50]. The Committee urges the Government to indicate any investigation conducted into the complaint filed by Mr Puna in March 2013 and its findings.*

880. *The Committee also notes with concern the indication that Mr Puna was the subject of arbitrary arrest on 12 July 2013 during a public general meeting with State officials and is reported to have been detained for 24 hours in Lufungula prison. The Committee notes that, according to the complainant, Mr Puna's rapid release was only due to the arrival of the ILO mission the next day. Noting the lack of information from the Government on this incident, and recalling that the arrest and detention of trade unionists without any charges being laid or court warrants being issued, constitutes a serious violation of trade union rights [see **Digest**, op. cit., para. 69], the Committee urges the Government to indicate the reasons for the arrest of the General Secretary of SYNECAT on 12 July 2013, and his detention for 24 hours.*

881. *Finally, the Committee notes the indication by the complainant that Mr Puna's salary has been withheld for 60 months without any valid reason. SYNECAT explains that Mr Puna was declared a "deserter" in 2011 because of his absences for part of the school year due to his nomination in December 2010 on the Inter-Institutional Commission entrusted with the examination of the appeals lodged following the Ordinances of 31 July 2009 and 2 January 2010. In this respect, the Committee notes a communication from the Ministry of the Public Service to the Secretary-General for Primary, Secondary and Vocational Training dated 9 April 2011 (ref. CAB.MIN/FP/USKD/Syn/535/LAW/187/2011), indicating that the work of the Inter-Institutional Appeals Commission for State Employees and Officials was still continuing on 9 April 2011 and that, in view of the workload, which was described as intensive, the members appointed by the Order of 20 December 2010,*

including Mr Jean Bosco Puna, General Secretary of SYNECAT and an active member of the Commission, should be classified administratively as being detached, in accordance with the Conditions of Service of Career Personnel of State Public Services, until otherwise indicated.

882. *In this regard, the Committee notes the Government's indication in its reply that Mr Puna was punished for "deserting" his post as a French teacher at the Notre Dame de Fatima Institute in Kinshasa, to which he had been assigned. He is reported to have accumulated over 155 days of unjustified absence during the 2009–10 and 2010–11 school years. The Government emphasizes that the Institute was indulgent in issuing the punishment so belatedly as the rules of the schools in the catholic network classify 15 days of unjustified absence during a school year as "desertion".*

883. *The Committee also notes that the mission met a representative of the sub-provincial coordination unit for registered catholic schools in Lukunga, Sister Philomène Muntumpe Cisopa. The Committee notes that the coordination unit is responsible for the Notre Dame de Fatima Institute, to which Mr Puna was posted in 2008 as a French teacher. The Committee notes the indication that the sub-provincial coordination unit assigned Mr Puna to the Notre Dame de Fatima Institute by an order of 17 November 2008 and that he came personally to pick up his assignment order on 19 November 2008. He is also reported to have decided to make the arrangements himself with SECOPE, instead of the school administration, and that the Institute did not subsequently concern itself with the payment of his salary. The Committee notes that, according to the representative of the sub-provincial coordination unit, Mr Puna had been an absentee teacher since his posting in 2008. Between 2008 and 2011, he was present very infrequently and seldom performed his job, thereby leaving the Institute to manage his absences through a replacement teacher. The result was that, in view of his absences (he was present for seven days during the 2009–10 school year, and five days out of 157 during the 2010–11 school year, according to a report of the Notre Dame de Fatima Institute that was provided to the mission), the sub-provincial coordination unit decided to declare Mr Puna a "deserter" so that it could obtain another posting to replace him. The decision of the coordination unit was taken following a meeting with the person concerned on 6 April 2011. According to the sub-provincial coordination unit, the nomination of Mr Puna to the Commission entrusted with examining the appeals filed following the Ordinances of 31 July 2009 and 2 January 2010, which was originally for 90 days as from January 2011, did not dispense him from carrying out his duties as a teacher in the school. The sub-provincial coordination unit also considers that the communication of 9 April 2011 of the Ministry of the Public Service to the Secretary-General for Primary, Secondary and Vocational Education justifying Mr Puna's absences (produced after his "desertion" had been proclaimed on 8 April 2011), should have been submitted earlier and addressed in due time to the competent authorities as part of the procedure for the detachment of a replacement teacher.*

884. *The Committee notes that, according to the information provided to the mission, the sanction for "desertion" handed down to Mr Puna goes back to April 2011, at the time when he was nominated by the Ministry of the Public Service as a member of the Appeals Commission for several months. Moreover, according to the allegations of the complainant, the Ministry of Primary, Secondary and Vocational Education decided, as a punishment, to suspend the payment of his salary from 2009, since when he has been without income. The Committee notes the Government's explanation that, following the posting of Mr Puna in November 2008, it was the responsibility of the Notre Dame de Fatima Institute to make the necessary arrangements with SECOPE for the payment of his salary, but that Mr Puna expressed the desire to deal in person with the arrangements with SECOPE, thereby relieving the Institute of its responsibility in that regard.*

885. *In light of the divergent information provided by the Government and the complainant on the circumstances and duration of the suspension of Mr Puna's salary, the Committee urges the Government to take all the necessary measures to find an explanation for the non-payment of Mr Puna's remuneration and to inform the Committee without delay. If it is found that this trade union leader's salary has been withheld since 2009 for having carried out legitimate trade union activities, or if he has not received his salary due to a problem in the functioning of the electronic pay system, whoever may be responsible for the problem, the Committee expects the Government to take all the necessary measures to ensure the payment of the wages that are due.*

886. *Finally, the Committee recalls that it is not competent to comment on a sanction issued against an official for objective reasons, unless the sanction appears to originate from considerations relating to the exercise of legitimate trade union activities. In the present case, the Committee believes that the situation which resulted in Mr Puna being punished as a "deserter" in April 2011 could have been the result of a misunderstanding or lack of communication between Mr Puna, who was at the time detached on official duties, in his capacity as a trade union leader, and the various administrative departments concerned, including the school to which he was posted at the time. If necessary, the Committee requests the Government, in a spirit of conciliation, to engage in dialogue with SYNECAT with a view to finding an adequate solution for the professional situation of its General Secretary. The Committee requests the Government to keep it informed of any developments in this regard.*

The Committee's recommendations

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

(a) The Committee requests the Government to indicate whether the national committee elected by the extraordinary congress in April 2009 is recognized by the authorities as representing SYNECAT and, if so, whether its leaders participate in consultations and negotiations in the sector.

(b) Once again recalling the principle of the inviolability of trade union premises and assets, the Committee urges the Government to ensure compliance in future with the principle that the public authorities may not insist on entering union premises without prior authorization by the union or without having obtained a legal warrant to do so.

(c) The Committee invites the Government and the complainant organization to negotiate arrangements for the deduction at source of the union dues of teachers who are members of the organization. The Committee requests the Government to keep it informed of any developments in this regard.

(d) The Committee urges the Government to indicate any investigation conducted into the charge of attempted murder filed by Mr Puna in March 2013 and its findings.

(e) The Committee urges the Government to indicate the reasons for the arrest of the General Secretary of SYNECAT on 12 July 2013, and his detention for 24 hours.

(f) The Committee urges the Government to take all the necessary measures to find an explanation for the non-payment of Mr Puna's remuneration and to inform the Committee without delay. If it is found that this trade union leader's pay has been withheld since 2009 for having carried out legitimate trade union activities, or if he has not received his salary due to a problem in the functioning of the electronic pay system, whoever may be responsible for the problem, the Committee expects the Government to take all the necessary measures to ensure the payment of the wages that are due.

(g) The Committee requests the Government, in a spirit of conciliation, to engage in dialogue with SYNECAT with a view to finding an adequate solution for the professional situation of its General Secretary. The Committee requests the Government to keep it informed of any developments in this regard.

Appendix

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

A. Background to the mission

1. Since 2009, the Committee on Freedom of Association has had before it several complaints presented by various trade union confederations against the Government of the Democratic Republic of the Congo. The Committee currently has six complaints under examination. As required by the Committee's procedure, the Government has been invited to provide its observations in response to the allegations contained in the complaints. However, until very recently, the Government has not reacted in any of the cases and, despite regular reminders from the Office, no observations on the allegations or the Committee's recommendations have reached the Office. The Chairperson of the Committee on Freedom of Association met a Government delegation to recall 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 provided part of the information requested on three of the six cases in January 2013 and accepted an assistance mission by the Office to gather information on the cases. The mission, composed of a legal specialist on freedom of association 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 logistical support from the ILO Office in Kinshasa and the collaboration of the Ministry of Labour to prepare its schedule of meetings. The mission was able to meet all the parties in the six cases under examination by the Committee, as well as the Minister of Labour and the Director of the Office of the Prime Minister, as the latter was unable to attend at the last minute.

B. Information gathered by the mission concerning Case No. 2713

4. With regard to Case No. 2713, the mission met the members of the national committee of the National Union of Teachers in Registered Schools (SYNECAT), including the General Secretary, Jean Bosco Puna, at the organization's headquarters in Kinshasa. The mission also met Sister Philomène Muntumpe Cisopa, a representative of the sub-provincial coordination unit for registered catholic schools in Lukunga, which is responsible for the Notre Dame de Fatima Institute, to which Mr Puna was posted in 2008 as a French teacher.

5. The mission was provided with the following information by SYNECAT:

(i) Relating to the situation of the organization

6. SYNECAT continues to complain of Government interference in its activities, as it reports that the Ministry of Primary, Secondary and Vocational Education continues to work with a SYNECAT committee led by André Malasi, former president of the union, even though he was disavowed by the organization at its extraordinary general congress in March 2008. SYNECAT also provided the mission with the general report of the extraordinary congress, which had been held in April 2009 despite the incidents reported in SYNECAT's complaint, and which resulted in the election of a new national committee under the leadership of a General Secretary (Mr Puna) and two Deputy General Secretaries (Tshimbalinga Kasanji and Nguizani Za Makiona). The congress was opened and closed by a representative of the Ministry of Employment, Labour and Social Welfare (Mr Mwimba). However, SYNECAT denounces the refusal of the Ministry of Labour to issue a new order respecting the union. The organization also provided the mission with a notarized document dated 16 May 2013 of the Chancellor's Office certifying the submission to the authorities of the report of the extraordinary general congress of SYNECAT in 2009.

7. SYNECAT also denounces the Government's refusal to deduct the union dues of its members at source and intimidation against its members.

(ii) On the personal situation of the General Secretary of SYNECAT

8. The General Secretary of SYNECAT, Mr Jean Bosco Puna, is reported to have had his salary withheld since 2009 without any valid reason (60 months of unpaid salary). SYNECAT indicated that Mr Puna was declared a "deserter" in 2011 because of his absences for part of the school year, even though it was with the agreement of the head of the establishment, following his nomination in December 2010 on the Inter-Institutional Commission entrusted with the examination of the appeals lodged by employees affected by the Ordinances terminating their employment. In this regard, SYNECAT provided the Committee with a communication from the Ministry of the Public Service to the Secretary-General of Primary, Secondary and Vocational Training (ref. CAB.MIN/FP/USKD/Syn/535/LAW/187/2011) indicating that the work of the Inter-Institutional Appeals Commission for State Employees and Officials was still continuing on 9 April 2011, and that "in view of the intensive workload", the members appointed by the Order of 20 December 2010, including Mr Jean Bosco Puna, General Secretary of SYNECAT and an active member of the Commission, should be classified administratively as being detached, in accordance with the Conditions of Service of Career Personnel of State Public Services, until otherwise indicated. SYNECAT called for the reinstatement of Mr Puna as a teacher.

9. SYNECAT informed the Committee of the attempted murder of the General Secretary in March 2013, when his wife was seriously wounded. No investigation was opened by the police, despite the lodging of a complaint. SYNECAT requests assistance to cover the cost of care for Mr Puna's wife and the opening of a police investigation.

10. Finally, SYNECAT indicated that Mr Puna had been subject to arbitrary arrest on 12 July 2013 in Golgotha Square during a general meeting with State officials and was detained for 24 hours in Lufungula prison. According to SYNECAT, Mr Puna owed his rapid release to the arrival of the ILO mission the next day.

11. The mission also met Sister Philomène Muntumpe Cisopa, representative of the sub-provincial coordination unit for registered catholic schools in Lukunga, which is responsible for the Notre Dame de Fatima Institute, to which Mr Puna was posted in 2008 as a French teacher.

12. At the outset, Sister Philomène said that the sole aim of her meeting with the mission was to inform it of the situation with regard to Mr Puna's employment as a French teacher in one of the private schools covered by the sub-provincial coordination unit for registered catholic schools. She indicated that she was aware of Mr Puna's union activities and confirmed the internal conflict within SYNECAT between the faction led by Mr Malasi, considered to be moderate, and the faction led by Mr Puna, which she described as radical. While saying that she supported the claims put forward by Mr Puna's faction, she contested some of their means of action.

13. Sister Philomène told the mission that the coordination unit assigned Mr Puna to the Notre Dame de Fatima Institute on 17 November 2008, and that he came personally to take delivery of his assignment order on 19 November 2008. However, she indicated that he wished to make the arrangements himself with the Teachers' Pay Supervisory Service (SECOPE), instead of the school administration, and that the Institute did not thereafter concern itself with the issue of the payment of his salary.

14. Mr Puna was an absentee teacher following his assignment in 2008. Between 2008 and 2011, he was present very infrequently and seldom performed his job, therefore leaving the Institute to manage his absences through a replacement teacher. The result was that, in view of his absences (he was present for seven days during the 2009–10 school year, and five days out of 157 during the 2010–11 school year, according to a report of the Notre Dame de Fatima Institution that was provided to the mission), the coordination unit decided to declare Mr Puna a "deserter" so that it could obtain another posting to replace him. According to the coordination unit, the decision was taken belatedly (following over 55 days of unjustified absence) because the head of the establishment did not wish to be in conflict with Mr Puna, and this was the situation encountered by Sister Philomène when she took up her job in the coordination unit at the end of 2009. The decision of the coordination unit was taken following a meeting with the person concerned on 6 April 2011.

15. Sister Philomène indicated to the mission that a justification for Mr Puna's absences during the 2010–11 school year was his nomination by Ministerial Order No. 182 of 30 December 2010 on the Commission entrusted with examining appeals resulting from the Ordinances of 31 July 2009 and 2 January 2010. According to the coordination unit, this nomination, which was originally for 90 days as from January 2011, did not dispense Mr Puna from carrying out his duties as a teacher in the school. The coordination unit also considers that the communication of 9 April 2011 of the Ministry of the Public Service to the Secretary-General for Primary, Secondary and Vocational Education justifying Mr Puna's absences (produced after his "desertion" had been proclaimed on 8 April 2011) should have been submitted earlier and addressed in due time to the competent authorities as part of the procedure for the detachment of a public employee.

16. The mission raised certain of the above points with the Government (interference in union activities, the current judicial procedure concerning the internal conflict within the union, the arrest and alleged attempted murder of the General Secretary of the union). In response, the Government indicated that it needed time to provide the necessary clarifications to the Office. However, no information has yet been sent to the Office.

CASE NO. 2797

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 Trade Union Confederation of Congo (CSC)**
- **the National Workers' Union of Congo (UNTC)**
- **the United Workers' Organization of Congo (OTUC)**
- **the Democratic Confederation of Workers (CDT)**
- **SOLIDARITE**
- **the Conscience of Workers and Peasants (CTP)**
- **the Solidarity of Workers and Peasants (SOPA)**
- **ACTIONS**
- **the Workers' Alliance of Congo (ATC)**
- **the New Union Dynamics (NDS) replaced by the General Confederation of Independent Unions (CGSA)**
- **the Kongo General Workers' Federation (FGTK) and**
- **the Union Power of Congo (FOSYCO)**

Allegations: The complainants allege the mass dismissal of trade union officials, managers and employees of the financial authorities following a strike

888. 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 1290–1300, approved by the Governing Body at its 315th Session (November 2012)].

889. The Government provided partial information on the case in a communication dated 28 January 2013.

890. At its October 2013 meeting [see 370th Report, para. 11], the Committee noted that an ILO technical assistance mission visited the country in July 2013 to collect relevant information on the case.

891. 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

892. In its previous examination of the case in November 2012, the Committee made the following recommendations [see 365th Report, para. 1300]:

(a) The Committee regrets that the Government has not replied to the complainants' allegations, even though it has been requested several times, including through two urgent appeals, to present its comments and observations on the case. The Committee once again notes with deep regret that the Government has still not provided any information whatsoever regarding the five consecutive complaints submitted since 2009, which have already been examined in the absence of a response from the Government, and which allege grave violations of freedom of association. Furthermore, the Committee once again notes with deep regret that the Government continues to fail to comply, despite the assurances given to the Chairperson of the Committee at a meeting held in June 2011, and urges the Government to be more cooperative concerning this case.

(b) The Committee is particularly concerned by the fact that this case concerns the dismissal of a large number of public servants, including many trade union members and officials, and requests the Government to provide, without delay, its observations on the complainants' allegations. Should it be found that the officials in question were dismissed due to their involvement in a legitimate and peaceful strike, the Committee urges the Government to take any steps that may be necessary to ensure their reinstatement with full payment of back wages. If that is not the case, the Committee requests the Government to provide any information on the reasons for the decision to remove the employees from office, as per Presidential Ordinance No. 10/001 and Ministerial Order No. CAB.MI/FP/MBB/TAS/SDB/185/2009. It also requests the Government to keep it informed of any conclusions reached by the review commission which has examined the appeal against the Ordinance and of any follow-up thereto.

(c) The Committee requests the Government to accept a high-level mission to discuss all the complaints pending before the Committee concerning the Democratic Republic of the Congo.

B. The Government's reply

893. In a communication dated 28 January 2013, the Government indicates that appeals were lodged against the administrative act that dismissed the employees of the fiscal authorities, which resulted in the Ministry of the Public Service setting up an ad hoc committee to review these appeals. The committee has completed its work. The Government consequently observes that the procedure is still ongoing and also recalls the possibility of filing judicial appeals against the contested act.

C. The Committee's conclusions

894. *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 has taken note of the report of the technical assistance mission (set out in the appendix to this report) and welcomes the new spirit of cooperation demonstrated by the Government. It expects the recommendations it makes to be put into effect in the same spirit.*

895. *The Committee notes that this case concerns the mass dismissal of trade union officials of the fiscal authorities, namely, the General Directorate for Administrative, Judicial, State and Contributory Revenues (DGRAD), the General Directorate for Taxes (DGI) and the General Directorate for Customs and Excise Duties (DGDA), following a strike called in the fourth quarter of 2009. The Committee recalls that, in January 2010, Ordinance*

No. 10/001 of the President of the Republic and Order No. CAB.MIN/FP/MBB/ TAS/SDB/185/2009 of the Minister of the Public Service were adopted, removing almost 200 managers and employees of the financial and budget ministries from their posts, including 27 trade union delegates, on the grounds that the officials in question had engaged in misconduct constituting serious dereliction of honour, dignity and duty, leading to disciplinary action, or had incurred, on at least one occasion, a term of penal servitude of more than three months. The complainant organizations have indicated, in respect of the dismissed trade union delegates, that the employees concerned had clean administrative records, and some of them had already been subjected to sanctions following disciplinary proceedings. Furthermore, according to the complainant organizations, these trade union delegates were not notified individually of the decision to remove them from their positions, which is contrary to the provisions of the texts governing the status of career officials in the state services and the disciplinary rules applicable to them.

896. *The Committee notes that the ILO mission conducted in July 2013 gathered additional information on this case from the complainant organizations. The Committee notes in particular the indication that the Ministry of the Public Service set up ad hoc committees to review the appeals relating to the dismissal of the trade union delegates. However, the results of these reviews have apparently not yet been made public. The Committee notes in this regard that the Government confirmed in its communication of 28 January 2013 that the Ministry of the Public Service had set up an ad hoc committee to review the administrative appeals lodged against the decision to remove the employees from office and that the committee had completed its work. Finally, the Committee notes that the mission asked the Ministry of the Public Service to send any conclusions reached by the ad hoc committee in respect of the dismissed trade union delegates. Noting that the Office has still not received the information requested, the Committee urges the Government to provide information on the conclusions of the ad hoc committees set up to review the appeals lodged in respect of the dismissal of the trade union delegates and on any follow-up thereto.*

897. *Moreover, the Committee notes the statement that, in parallel to the administrative procedure, a group of officials affected by the decisions to remove the employees from office lodged a judicial complaint against the ordinances, which in April 2013 led the Ministry of the Public Service to request an advisory opinion from the Supreme Court of Justice on certain points concerning the presidential ordinances. The Committee notes that on 11 June 2013 the Supreme Court issued an opinion on the questions raised. In this opinion, the Supreme Court of Justice, while indicating that the President of the Republic is competent to decide on the compulsory retirement and the removal from office of officials in positions of responsibility in the DGDA, recalls that the Prime Minister is the only person with the authority to remove officials in the implementation and collaboration category from office, on the proposal of the Director General of Customs and Excise and after requesting the views of the Ministers of Finance and the Public Service, respectively, within their remit (article 76 of Decree No. 011/08 of 2 February 2011 concerning the rules relating to DGDA personnel administration).*

898. *The Committee also notes that the complainant organizations have provided the mission with copies of several communications from the Prime Minister's Office dating back to March 2010, recalling the exclusive authority of the Prime Minister in respect of removing officials in the implementation and collaboration category in all the financial authorities (DGI, DGRAD and DGDA) from office and urging the Minister of the Public Service to draw the necessary conclusions (communications dated 4 March, 18 June and 14 October 2010).*

899. *The Committee notes that, according to the complainant organizations, the normal consequence of communications from the Prime Minister's Office addressed to the Minister of the Public Service and of an advisory opinion from the Supreme Court of Justice would be to declare the decision of 6 January 2010 to remove the employees from office null and void. However, the Government has not yet taken any steps in this direction. In this respect, the Committee notes that the Minister of the Public Service confirmed to the mission that the conclusions to be drawn from the advisory opinion of the Supreme Court of Justice were still under examination.*

900. *The Committee notes with deep concern the information provided to the mission relating to the adverse consequences of the dismissals on the everyday life of the trade union delegates concerned and their families since January 2010, namely the death of six trade unionists and the family conflicts caused by this longstanding situation. The Committee consequently firmly expects the Government to undertake, without delay, concrete measures in this case, taking due account of the various elements recalled above. In the event of the reinstatement of the trade union delegates, the Committee expects that the delegates, or their dependants, will receive at least the emoluments due since their removal from office, based on the understanding that the indemnities and sanctions imposed should be sufficiently dissuasive to ensure that such situations do not recur. The Committee urges the Government to indicate without delay the measures being taken in this regard.*

The Committee's recommendations

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

(a) The Committee urges the Government to provide information on the conclusions of the ad hoc committees set up to review the appeals lodged in respect of the dismissal of the trade union delegates and on any follow-up thereto.

(b) Noting with deep concern the information provided to the mission relating to the adverse consequences of the dismissals on the everyday life of the trade union delegates concerned and their families, the Committee firmly expects the Government to undertake, without delay, concrete measures in this case, taking due account of the various elements recalled in its conclusions. In the event of the reinstatement of the trade union delegates, the Committee expects that the delegates, or their dependants, will receive at least the emoluments due since their removal from office, based on the understanding that the indemnities and sanctions imposed should be sufficiently dissuasive to ensure that such situations do not recur. The Committee urges the Government to indicate without delay the measures being taken in this regard.

Appendix

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 provided a response with regard to any of the cases and, despite regular reminders by the Office, no observations, either on the allegations or on the Committee's recommendations, were 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, on several occasions, the technical assistance of the Office.

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 benefited from 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 for Labour and the Director of the Prime Minister's Office (the Prime Minister himself was prevented from coming at the last minute).

B. Information gathered by the mission on Case No. 2797

4. Concerning Case No. 2797, the mission met the officials of the complainant trade unions constituting the National Inter-Union Association of the Congo (hereinafter the Inter-Union Association) at the headquarters of the Trade Union Confederation of Congo (CSC) (see attached list). The mission also met representatives from the Ministry of the Public Service to gather information.

   When the mission met the Inter-Union Association, the participants reiterated the allegations contained in the complaint presented to the Committee on Freedom of Association. They indicated in particular that a Presidential Ordinance (No. 10/001 of 2 January 2010) and an Order of the Minister of the Public Service (No. CAB.MIN/FP/MBB/TSA/SDB/185/2010 of 6 January 2010) had been issued to remove managers and implementation and collaboration officials from office (27 of whom were trade union delegates) at the following general directorates: the General Directorate for Administrative, Judicial, State and Contributory Revenues (DGRAD), the General Directorate for Taxes (DGI), and the General Directorate for Customs and Excise Duties (DGDA). The grounds given in the instruments to justify the removal from office are "misconduct constituting serious dereliction of honour, dignity and duty". However, the Inter-Union Association insists on the fact that none of the trade union delegates in question had been subject to prior disciplinary action, as required by the various

instruments governing the status of career officials in the state services and the disciplinary rules applicable to them.

The Inter-Union Association recalled that the Ministry of the Public Service set up successive ad hoc committees to examine the appeals lodged in relation to the dismissal of the trade union delegates. However, the results of these reviews are not known. In parallel, a group of officials lodged a judicial appeal against the ordinances, which, in March 2013, led the Minister of the Public Service to request an advisory opinion from the Supreme Court of Justice on certain points relating to the presidential ordinances. On 11 June 2013, the Supreme Court issued an opinion on the questions raised and, at the same time, recalled that the Prime Minister was the only person with the authority to remove career implementation and collaboration officials in the state services from office, and not the Minister of the Public Service. The Inter-Union Association considers that the immediate consequence of the Court opinion should be to declare the Order of 6 January 2010, issued by the Minister of the Public Service, null and void. However, the Inter-Union Association observes with regret that no steps have yet been taken in this direction by the Minister of the Public Service in respect of the Court opinion.

The Inter-Union Association points out that its complaint only relates to the situation of the trade union delegates affected by the dismissals, and not the situation of other managers and officials of authorities, whose professional situation could justify their compulsory retirement or removal from office. The Inter-Union Association insists on the fact that none of the trade union delegates removed from office had been subject to prior disciplinary action.

Consequently, the Inter-Union Association requests the reinstatement of all the trade union delegates removed from office, with the payment of the wages due since their removal from office. In this respect, the Inter-Union Association requested that the Government overturn the Order of the Minister of the Public Service while the mission was still in the country. The Inter-Union Association denounces the disastrous social repercussions of the dismissals on the officials concerned, and their families, namely the death of six trade unionists and the family conflicts caused by this situation.

In support of its argument, the Inter-Union Association sent the following documents to the mission:

- A communication dated 4 March 2010 from the Prime Minister's Office to the Minister of the Public Service (ref. RDC/GC/PM/011/2010) recalling articles 92, clause 3, and 221 of the Constitution, under which the Prime Minister is the only person with the authority to make appointments to civil and military posts other than those filled by the President of the Republic and indicating that any decision to appoint, promote or dismiss officials other than those stipulated in article 81, clause 1, point 4, of the Constitution, must be the object of a draft decree to be signed by the Prime Minister.
- A communication dated 18 June 2010 from the Deputy Prime Minister to the Minister of the Public Service (ref. 025/CAB/VPM/INTERSEC/1557/10) recalling the content of the communication from the Prime Minister's Office and requesting that "scrupulous account be taken of the recommendations made".
- A communication dated 14 October 2010 from the Prime Minister's Office to the Minister of the Public Service (ref. RDC/GC/CPM/1698/2010) noting the failure to comply with the instructions contained in the communication of 4 March 2010 from the Prime Minister's Office, and once again drawing attention to the unconstitutionality of the decision taken and its negative repercussions on the careers and situation of the state officials concerned.

- An advisory opinion issued on 11 June 2013 by the Supreme Court of Justice on the interpretation of instruments relating to the age of compulsory retirement and the removal from office of officials in positions of responsibility in the state public services and the DGDA. This opinion was handed down following a request by the Minister of the Public Service (March 2013). In this opinion, the Supreme Court of Justice, while indicating that the President of the Republic is competent to decide on the compulsory retirement and the removal from office of officials in positions of responsibility in the DGDA, recalls that the Prime Minister is the only person with the authority to remove officials in the implementation and collaboration category from office, on the proposal of the Director-General of Customs and Excise Duties and after requesting the views of the ministers of finance and the public service, respectively, within their remit (art. 76 of Decree No. 011/08 of 2 February 2011 concerning the rules relating to DGDA personnel administration).

During its meeting with the representatives of the Ministry of the Public Service, the mission was informed that the conclusions to be drawn from the advisory opinion of the Supreme Court of Justice were still under examination. The mission asked the Ministry of the Public Service for the reports of the review committees set up by the Ministry (mission order dated 26 April 2010) in order to examine the administrative records of the trade union delegates removed from office. The Ministry of the Public Service requested a period of a few days to communicate these reports. However, the reports have still not been transmitted to the Office.

Annex

Meeting with the National Inter-Union Association of the Congo

(15 July 2013)

- Mr Guy Kolela Tshibangu, President of the Inter-Union Association and President of the CSC;
- Mr Modeste Amédée Ndongala N'Jibu, President of the UNTC;
- Mr Pierre Clavere Mangwaya, Vice-President of the CDT;
- Mr Francis Garbiel Tambala, President of the FOSYCO;
- Mr Valentin Mangwala, President of the OTUC;
- Mr Joseph Mwanamvita, General Secretary of the CTP;
- Mr Patrice Yangoba Lumanisha, dismissed trade union delegate of the DGI;
- Mr Nsomue Mbodi Kapenga, dismissed trade union delegate of the DGI;
- Mr Muteba Yampeshi, dismissed trade union delegate of the DGI.

CASE NO. 2925

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

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

Allegations: The complainant alleges acts of anti-union discrimination against members of the CCT/Land Affairs committee by the Department of Land Affairs

902. 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 1127–1141].

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

904. 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

905. In its previous examination of the case in March 2013, the Committee made the following recommendations [see 367th Report, para. 1141]:

(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 this case. The Committee notes with deep concern that this is the sixth successive case since 2009 for which the Government has failed to provide any information in reply to the allegations presented by the complainants. The Committee firmly urges the Government to be more cooperative in future.

(b) The Committee urges the Government to carry out an investigation without delay into the allegations of anti-union harassment and stoppage of pay of members of the Congolese Labour Confederation (CCT)/Land Affairs union committee, namely Mr Ruphin Kisenda, Mr Léon Bakaka, Mr Zacharie Lukabya, Mr Benjamin Milabyo and Mr Justin Lohekele, and to provide detailed information on their current employment status and the situation of the CCT/Land Affairs within the administrative department in question.

B. The Committee's conclusions

906. *The Committee notes with interest that the Government accepted a technical assistance mission from the International Labour Office in order to gather information on the various cases that the Committee has been examining for many years, without any real progress*

being noted regarding action taken further to its recommendations. The Committee has taken note of the report of the technical assistance mission (see the appendix to the present document) and welcomes the new spirit of cooperation demonstrated by the Government. It hopes that the recommendations that it makes will be acted upon in the same spirit.

907. *The Committee recalls that the present case is concerned with alleged acts of harassment against trade union members of the CCT/Land Affairs, in particular the stoppage of pay and social benefits and subsequent dismissal from the Department of Land Affairs.*

908. *The Committee notes that the ILO mission met the trade union representatives involved in the present case, namely Mr Ruphin Kisenda, Mr Léon Bakaka, Mr Zacharie Lukabya and Mr Benjamin Milabyo. It notes that Mr Justin Lohekele, who the complaint also concerns, took compulsory retirement further to a presidential ordinance of 31 July 2009. The Committee notes that the mission also met representatives of the Department of Land Affairs at its headquarters in Kinshasa. The mission was also received by Mr Bokoko, assistant to the Secretary-General for Land Affairs, the director of human resources and an inter-union committee. The Committee notes that the mission received documentation from the CCT relating to correspondence in support of its allegations, but that the documents requested by the mission from the administration that could support the statements of the representative of the Department of Land Affairs were not handed over to the mission on the spot or subsequently sent to the Office. The Committee regrets this situation, which prevents it from reaching a decision in full knowledge of the facts. However, the Committee considers that, in the light of the mission report, the information now available provides some clarification of the events that have occurred in the present case.*

909. *Firstly, the Committee notes the indication that the union representatives in question were all members of the Free Trade Union of the Congo (SLC) at the start of the case in 2008. It was in the capacity of SLC representatives that the persons concerned were initially subjected to anti-union harassment and disciplinary measures. Allegedly, they were wrongfully removed from union office by their original union (September 2009) and subsequently joined the CCT (July 2010), still within the Department of Land Affairs.*

910. *The Committee notes that Mr Léon Bakaka, first vice-president of the SLC committee (and later of the CCT committee), challenged an assignment order in September 2008, invoking his trade union mandate, and immediately received notification of his suspension for defamatory remarks against those in authority and of the opening of disciplinary proceedings. The Committee notes the statement by the CCT that, under the disciplinary regulations for public service employees, the latter may not be penalized in this way before having the opportunity to defend themselves during the disciplinary proceedings. The Committee notes the indication that, since the date of his suspension, Mr Bakaka has not been receiving the part of his pay corresponding to the bonus for assignment to the Department of Land Affairs (which is in addition to basic pay and constitutes the biggest component in a public employee's remuneration). The Committee observes in this respect that the information at its disposal shows that the administration has not provided any more details regarding the defamatory remarks which Mr Bakaka is alleged to have made.*

911. *The Committee is bound to draw attention to Convention No. 135, ratified by the Government, which provides explicitly that workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as workers' representatives or on union membership, or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 800]. Furthermore, observing that no information has been supplied on the outcome*

of the disciplinary proceedings, and noting that the person concerned has filed an appeal with the judicial bodies but no response appears to have been made, the Committee recalls that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial. 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****, op. cit., paras 820 and 826].*

912. *In view of these circumstances, the Committee can only deplore the time that has elapsed since the opening of the disciplinary proceedings and deeply regret the lack of information from the authorities, more than five years later, concerning the outcome of these proceedings. The Committee therefore urges the Government to take all the necessary steps to ensure the immediate reinstatement of Mr Bakaka in his post at the Department of Land Affairs and the payment of the salary that has been due to him since his suspension, pending a final decision on his case from the administration and subject to any appeal. The Committee expects the Government to report on the measures taken to this end in the very near future.*

913. *Moreover, the Committee notes with concern the allegations reiterated by the CCT to the mission concerning the harassment of trade union representatives of the CCT/Land Affairs committee for complaining of poor management in their administrative department. The acts of harassment include attempts at forcible confinement reported by the persons concerned in January 2009, "punitive" assignments, suspension of payment of the assignment bonus and even of the whole salary from April to June 2011, the opening of disciplinary proceedings and the barring of entry to the workplace. The Committee observes, according to the information supplied to the mission, that the union representatives in question complained in communications to various administrative and judicial authorities about the treatment they had received but there has been no response.*

914. *The Committee notes that, according to the administration, all attempts at dialogue with Mr Kisenda, Mr Bakaka, Mr Lukabya and Mr Milabyo have failed since they systematically acted in such a way as to prevent the smooth functioning of the department (obstruction of entrances, public disturbances). They reportedly refused to answer any summons from the disciplinary board or to comply with assignment orders, with the result that their original trade union removed them from office. Nevertheless they joined another union (the CCT) and continue to create public disturbances in order to be heard. According to the administration, in view of the obstructions caused, the Minister for Land Affairs referred their case to the Minister for the Public Service in 2011. They were summoned to appear before a disciplinary board but they failed to appear. The disciplinary board reportedly recommended that they be removed from trade union office in June 2011. On the instruction of the Minister for Land Affairs, the four union representatives are now barred from the premises of the Department of Land Affairs for disturbances of public order, pending the outcome of the disciplinary proceedings.*

915. *The Committee notes that there are discrepancies in the analysis of the situation of union representatives Mr Kisenda, Mr Bakaka, Mr Lukabya and Mr Milabyo. However, the exchanges of correspondence at its disposal enable it to reach the following conclusions.*

916. *Within both the SLC and the CCT, the union representatives asked for clarification concerning the management of the administrative department concerned (2009–2011). The Committee notes the administration's refusal to agree to the request for a public debate on a number of grounds which appear to be contrary to the principles of freedom of*

association, in particular that the union committee included a civil servant who had reportedly taken compulsory retirement further to a presidential ordinance and was therefore no longer entitled to hold union office. The Committee also observes that, further to the information from the CCT concerning the establishment of the new CCT/Land Affairs union committee, the Secretary-General for Land Affairs, in his reply to the organization, indicates that since one of the committee members (Mr Lohekele) took compulsory retirement further to a presidential ordinance, he can no longer perform union functions. In this regard the Committee recalls the principle that, given that workers' organizations are entitled to elect their representatives in full freedom, the dismissal of a trade union leader, or simply the fact that a trade union leader leaves the work that he or she was carrying out in a given undertaking, should not affect his or her trade union status or functions unless stipulated otherwise by the constitution of the trade union in question [see ***Digest****, op. cit., para. 411].*

917. *The Committee also notes that the Secretary-General, in his reply, observes that the conduct of trade union affairs can only be entrusted to persons "who show respect for laws and regulations". This formulation amounts to questioning the credibility of the CCT representatives and not recognizing their status. Apart from the principle according to which the determination of conditions of eligibility for union membership or union office is a matter that should be left to the discretion of union by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right by trade union organizations [see* ***Digest****, op. cit., para. 405], the Committee wishes to draw the Government's attention to the fact that such remarks by the public employer questioning the integrity of trade union leaders through sweeping statements concerning failure to "show respect for laws and regulations" is not at all conducive to the development of harmonious labour relations and infringes the right to elect trade union leaders in full freedom.*

918. *Finally, the Committee notes the circular of 19 April 2011 from the Secretary-General for Land Affairs to all property registrars and chiefs of land registry divisions in Kinshasa describing employees Mr Bakaka, Mr Lukabya, Mr Kisenda and Mr Milabyo as "deserters" and denying them access to their workplace ("the premises of their division") pending the resolution of their disciplinary case referred to the Minister for the Public Service. He further notes that, on 20 January 2012, an official communiqué from the Secretary-General for Land Affairs states that the four employees are barred from entering their office pending the closure of the disciplinary proceedings and threatens severe penalties for any employee disrupting the smooth operation of the department. Lastly, in a letter of August 2012 to the Secretary-General for Land Affairs, the Minister for Land Affairs takes note of a letter received from the Land Affairs inter-union committee castigating the anti-administration conduct of the four employees and confirming the ban on entry to the premises of the central administration and the divisions pending the closure of the cases before the disciplinary board.*

919. *According to the Committee's understanding, the disciplinary proceedings were opened because of the refusal by the persons concerned to take up their new assignments, which they view as punitive measures. The Committee further notes that, according to the administration, the disciplinary board recommended that the four employees be removed from union office in June 2011. In the absence of more up-to-date information and if the information is proven, the Committee is bound to regret the time that has elapsed between the recommendation being made and the implementation thereof, inasmuch as the administration confirmed during the mission of July 2013 that no decision had yet been taken with regard to the disciplinary cases involving the trade unionists concerned. The latter also confirmed to the mission that they did not know the outcome of the disciplinary proceedings, as well as contesting the manner in which these were conducted. The Committee urges the Government to send a copy, if applicable, of the recommendations of*

June 2011 of the disciplinary board concerning the proceedings against Mr Kisenda, Mr Bakaka, Mr Lukabya and Mr Milabyo, and also any information on action taken with respect to these recommendations.

920. *Noting the lack of information concerning the disciplinary board's recommendations, the Committee can only deeply deplore the treatment to which CCT/Land Affairs union committee members (Mr Kisenda, Mr Bakaka, Mr Lukabya and Mr Milabyo) have been exposed for three years. In view of the above, and in view of the exceptionally long period of time that has elapsed since the disciplinary measures were initiated, the Committee urges the Government to take the necessary steps to ensure the immediate reinstatement of the trade unionists and the retroactive payment of the salaries owed to them, pending the notification of a final decision on their case and subject to any appeal. In view of the circumstances, if there are compelling objective reasons that make reinstatement at the original workplace impossible, the Committee expects the authorities to negotiate with the employees concerned to find an alternative solution that is satisfactory to the parties. The Committee requests the Government to indicate any measures taken in this respect. Under the present circumstances, the Committee cannot but firmly recall that protection against all acts of anti-union discrimination in respect of their employment is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see* ***Digest****, op. cit., para. 799]. The Committee expects the Government to ensure full observance of this principle in the future.*

921. *As regards the allegations that the assignment bonus for the trade union representatives was withheld, in the absence of more detailed information on the matter, the Committee urges the Government to conduct an inquiry without delay into the reasons for such a decision on the part of the competent ministry and to keep it informed of the outcome. If such a decision proves to have been taken in retaliation for legitimate trade union activities, the Committee expects the situation to be rectified immediately, particularly through the payment of all suspended bonuses that are still owed to the trade unionists.*

922. *Moreover, the Committee observes that, by barring the four employees, all of them members of the CCT/Land Affairs union committee, from entry to the workplace, the decision taken by the administration may have had an adverse impact on the exercise of the activities of the trade union at the Department of Land Affairs.*

923. *Noting the reasons put forward by the Government to justify this ban, namely that the trade union representatives in question were taking systematic action to prevent the smooth running of the department (obstruction of entrances, public disturbances), the Committee recalls that although the right of holding trade union meetings is an essential aspect of trade union rights, the organizations concerned must observe the general provisions relating to public meetings, a principle that is also contained in Article 8 of Convention No. 87, which provides that workers and their organizations, like other persons or organized collectivities, shall respect the law of the land. However, for the right to organize to be meaningful, workers' organizations should be able to further and defend the interests of their members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers' representatives, including access to the workplace of trade union members. Access to the workplace should not of course be exercised to the detriment of the efficient functioning of the administration or public institutions concerned. Therefore, the workers' organizations concerned and the employer should strive to reach agreements so that access to workplaces, during and outside working hours, should be granted to workers' organizations without impairing the efficient functioning of the administration or the public institution concerned [see* ***Digest****, op. cit., paras 143, 1106 and 1109]. The Committee therefore urges the Government to ensure that*

agreements are concluded to enable the CCT union leaders, including the members of the CCT/Land Affairs union committee, to have free access to the workers of the administrative department concerned in order to conduct normal trade union activities.

924. *The Committee notes with deep concern that, in the present case, the trade union representatives affected by measures that they considered to be of an anti-union nature have had recourse, on behalf of the SLC, the CCT and individually, to the various administrative and judicial authorities of the country but no response has been made to their requests. The Committee notes with concern the indication from the CCT that 89 items of correspondence sent to the authorities have received no reply. The Committee recalls 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. Where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see* ***Digest****, op. cit., paras 817 and 835].*

The Committee's recommendations

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

(a) Deploring the time that has elapsed since the opening of the disciplinary proceedings and deeply regretting the lack of information from the authorities, more than five years later, concerning the outcome of these proceedings, the Committee urges the Government to take all the necessary steps to ensure the immediate reinstatement of Mr Bakaka in his post at the Department of Land Affairs and the payment of the salary that has been due to him since his suspension, pending a final decision on his case from the administration and subject to any appeal. The Committee expects the Government to report on the measures taken to this end in the very near future.

(b) The Committee urges the Government to send a copy, if applicable, of the recommendations of June 2011 of the disciplinary board concerning the proceedings against Mr Kisenda, Mr Bakaka, Mr Lukabya and Mr Milabyo, and also any information on action taken to implement these recommendations.

(c) In view of the lack of information on the disciplinary board's recommendations and deeply deploring the treatment to which the CCT/Land Affairs union committee members (Mr Kisenda, Mr Bakaka, Mr Lukabya and Mr Milabyo) have been exposed for three years, the Committee urges the Government to take the necessary steps to ensure the immediate reinstatement of the trade unionists and the retroactive payment of the salaries owed to them, pending the notification of a final decision on their case from the administration and subject to any appeal. In view of the circumstances, if there are compelling objective reasons that make reinstatement at the original workplace impossible, the Committee expects the authorities to negotiate with the employees concerned to find an

alternative solution that is satisfactory to the parties. The Committee requests the Government to indicate any measures taken in this respect.

(d) As regards the allegations that the assignment bonus for the trade union representatives was withheld, the Committee urges the Government to conduct an inquiry without delay into the reasons for such a decision on the part of the competent ministry and to keep it informed of the outcome. If such a decision proves to have been taken in retaliation for legitimate trade union activities, the Committee expects the situation to be rectified immediately, particularly through the payment of all suspended bonuses that are still owed to the trade unionists.

(e) The Committee therefore urges the Government to ensure that agreements are concluded to enable the CCT union leaders, including the members of the CCT/Land Affairs union committee, to have free access to the workers of the administrative department concerned in order to conduct normal trade union activities.

Appendix

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

A. Background to the mission

1. Since 2009, the Committee on Freedom of Association has had before it several complaints presented by various trade union confederations against the Government of the Democratic Republic of the Congo. The Committee currently has six complaints under examination. As required by the Committee's procedure, the Government has been invited to provide its observations in response to the allegations contained in the complaints. However, until very recently, the Government has not reacted on any of the cases and, despite regular reminders from the Office, no observations on the allegations or the Committee's recommendations have reached the Office. The Chairperson of the Committee on Freedom of Association met a Government delegation to recall 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 provided part of the information requested on three of the six cases in January 2013 and accepted an assistance mission by the Office to gather information on the cases. The mission, composed of a legal specialist on freedom of association 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 logistical support from the ILO Office in Kinshasa and the collaboration of the Ministry of Labour to prepare its schedule of meetings. The mission was able to meet all the parties in the six cases under examination by the Committee, as well as the Minister of Labour and the Director of the Office of the Prime Minister, as the latter was unable to attend at the last minute.

B. Information gathered by the mission concerning Case No. 2925

4. The case concerns allegations of harassment and suspension of members of the CCT/Land Affairs committee since 2008 and a campaign of denigration by the directors of the Department of Land Affairs.

5. The mission met the trade union representatives concerned by the complaint, Mr Ruphin Kisenda, Mr Léon Bakaka, Mr Zacharie Lukabya, Mr Benjamin Milabyo, with the exception of Mr Justin Lohekele, at the headquarters of the complainant union, the CCT. The mission also met the representatives of the Department of Land Affairs. It was received by an assistant of the Secretary-General for Land Affairs, Mr Bokoko, accompanied by the Director of Human Resources and representatives of the inter-union committee for the Department.

(a) Information gathered during the meeting with the CCT

6. At its meeting with the CCT, the mission met the trade union representatives concerned by the complaint, who were all present, namely Mr Ruphin Kisenda, Mr Léon Bakaka, Mr Zacharie Lukabya and Mr Benjamin Milabyo (the fifth person referred to in the complaint, Mr Justin Lohekele, retired following the Presidential Ordinance of 31 July 2009). During the meeting, the trade union representatives repeated that they had been victims of anti-union harassment, deprived of part of their remuneration (the bonus for their assignment to the Department of Land Affairs, which accounts for the majority of the remuneration of a public official), denied access to their workplace, without any disciplinary proceedings being initiated against them, or any penalty imposed. In support of their allegations, the trade union representatives provided the mission with copies of the various communications exchanged with the administration of the Department, and with the various administrative and judicial authorities to which they had referred the matter throughout the conflict since 2008. During the meeting, the mission was told that the union representatives concerned were not members of the CCT, but of the SLC at the beginning of the dispute in 2008. It was, as SLC delegates, that they were initially victims of anti-union harassment and disciplinary measures. They say that they were removed from union office by their original union under abusive circumstances (in September 2009) and that they then joined the CCT (July 2010), still in the Department of Land Affairs.

7. During the meeting, the CCT particularly emphasized the situation of Mr Léon Bakaka, First Vice-President of the SLC committee and then of the CCT/Land Affairs committee, who was the victim, in the same way as the other union representatives, of the acts of anti-union discrimination mentioned above, and was suspended from September 2008, with disciplinary measures being taken against him for contesting his assignment on the grounds, among others, of his trade union functions. The harassment and suspension of Mr Bakaka's pay since 2008 had the dramatic consequence, according to the CCT, of the death of one of his children due to lack of medical care in May 2011, a period when the basic public service salaries of the four union officers were suspended (April–June 2011). The CCT provided the mission with all of the correspondence concerning the situation of Mr Bakaka since 2008.

8. The mission sets out below the principal events, as they emerge from the correspondence provided, which have affected the situation of the trade union representatives since 2008:

   – On 4 September 2008, Mr Bakaka was notified of a (collective) assignment order to the urban division of the property registry of N'Sele-Malaku.

   – On 12 September 2008, Mr Bakaka requested the cancellation of his assignment, among other reasons on grounds of his trade union activities, referring to the conflict between the SLC and the administration that would occur if his assignment were to be confirmed, and he objected to the negotiating methods leading up to the assignments.

– On 16 September 2008, Mr Bakaka, with Mr Milabyo and Mr Lukabya, sent a request for clarifications to the Director-General of the General Directorate of Administrative, Judicial, State and Contributory Revenues (DGRAD) relating to the negotiations concerning the bonus.

– On 24 September 2008, Mr Bakaka was notified of his suspension for defamatory remarks against those in authority and the initiation of disciplinary proceedings to which he would have to answer. According to the CCT, the case did not warrant a suspension before the opening of disciplinary proceedings in which the official could defend himself (section 26 of the General Conditions of Service of Career employees and officials of the State Public Services).

– On 20 October 2008, Mr Bakaka provided the office of the Directorate of General Services and Personnel with his arguments in his defence in relation to his suspension and the disciplinary proceedings against him. He contested his assignment on the same grounds as those set out in his request for its cancellation of 12 September. He raised the issue of the reasons for the "defamatory remarks against those in authority", of which he was accused. He recalled the provisions of the Order on trade union immunity.

– On 16 December 2008, the office of the Directorate of General Services and Personnel replied, recalling that the "Secretary-General has the right to suspend an official", that benefiting from immunity "does not mean being above everything, nor having the right to be disrespectful towards superiors [...]. You are a trade unionist in the Department of Land Affairs, and not on the National Committee of the Democratic Republic of the Congo."

– On 4 January 2009, the trade union representatives wrote to the Minister for Land Affairs and the President of the Court of Appeal of Gombe complaining of attempted forcible confinement and removal.

– On 26 January 2009, Mr Bakaka wrote to the Secretary-General of the Department of Land Affairs requesting the payment of the bonus component of his remuneration, which he had not received since September 2008.

– Starting from June 2009, the union representatives who were still members of the CCT/Land Affairs Union committee requested clarifications concerning the financial management of the Department. In particular, they called for a public discussion on the various issues relating to the management of the Department and the functioning of unions. This request was reiterated up to February 2011, although the union officers had in the meantime become members of the CCT/Land Affairs (July 2010).

– Finally, in 2011, the Department of Land Affairs indicated that it refused to organize a public discussion on the grounds, among others, that the CCT/Land Affairs did not recognize the inter-union committee, that its union committee included an official who had been placed on retirement by presidential ordinance and that the competent authority to convene such a meeting was the Minister or Secretary-General who headed the Department.

– In September 2009, Mr Bakaka wrote to the Minister of Justice bringing charges against the Secretary-General for Land Affairs for the failure to pay his bonus for 12 months on the grounds of his trade union activities and denouncing abuses and the misappropriation of funds in the Department of Land Affairs. In the letter, he claimed that he had exhausted all the available administrative remedies, to no avail.

– On 18 September 2009, the Secretary-General of the SLC wrote to Mr Kisenda, President of the CCT/Land Affairs union committee, and others, informing them of the removal of the four trade union representatives from the committee. Another communication from the SLC on the same date, which was not addressed to any of those who had been removed from union office, appointed Mr Alphonsine Ngalula

Mpiana as interim president of the SLC committee. The union representatives claim that they were unlawfully removed from their trade union functions by the Secretary-General of the SLC, who they believe came to an agreement with the Department of Land Affairs (according to the trade union representatives, they filed a case against the Secretary-General of the SLC, which is in abeyance before the general prosecutor's office of the Court of Appeal of Gombe concerning their removal from union office by the SLC, which has been shelved).

– On 22 September 2009, the union representatives, still on behalf of the SLC, wrote to the First President of the Court of Appeal of Gombe denouncing irregularities in their Department and reporting reprisals against them. On 23 September, they wrote to the Secretary-General of the SLC noting their removal from union office and expressing their intention to join another union. In December 2009, the five union representatives (including Mr Lohekele) signed a union communiqué on behalf of the SLC calling for a work stoppage. On 8 December 2009, the inter-union committee in the Department of Land Affairs disassociated itself from the strike call and denounced the fact that the union representatives concerned continued to claim membership of the SLC, even though their membership had been rescinded.

– On 20 July 2010, the five union representatives wrote to the Secretary-General of the SLC informing him that they were renouncing their membership of the SLC, that is six months after their letter of 23 September 2009 noting their removal from union office. The letter refers to a decision by the extraordinary general assembly authorizing them to announce the termination of their membership (it is not clear whether it was a general assembly of the SLC or of the CCT). On the same day, they became members of the CCT, and on 11 August 2010 they notified the Secretary-General of Land Affairs of the composition of the new CCT Land Affairs union committee. According to the communication, the union representatives shared out the same positions as when they had been on the SLC committee. They were accompanied by advisers.

– At the beginning of 2010, it appears that each of the union representatives received notification of assignments which they considered to be "punitive" transfers and which they contested. Mr Bakaka is reported to have been the subject of two successive reassignments in January and March 2010.

– On 23 August 2010, the five union representatives (including Mr Lohokele) wrote a letter to the Secretary-General of Land Affairs informing him of the termination of their membership of the SLC, that is 11 months after the letter of 18 September 2009 removing them from union office. In a letter from the CCT to the Secretary-General for Land Affairs, dated 11 August 2010, the five union representatives announced the democratic establishment of the CCT/Land Affairs union committee. The union representatives shared out the same positions on the CCT committee as when they had been on the SLC committee.

– In a letter of 24 September 2010, the Secretary-General for Land Affairs acknowledged receipt of the letter concerning the establishment of the CCT/Land Affairs union committee and recalled that those concerned had to comply with their assignments, under penalty of the sanctions set out in section 50 of the Conditions of Service of Public Service Personnel. He indicated that Mr Lohekele, who had been placed on retirement by presidential ordinance, could no longer hold office in the union. He added that responsibility for discharging union business could only be entrusted to persons who "showed respect for laws and regulations". He thereby specifically challenged the credibility of the CCT union representatives, and failed to recognize them as such.

– In its reply dated 28 October 2010, the CCT denounced the attitude and interference by the Secretary-General for Land Affairs in the appointment of CCT union representatives, and their treatment, and called for the immediate lifting of all the measures taken against them.

– In November 2010, Mr Bakaka wrote to the Minister of the Public Service describing his situation and requesting his intervention. During the same period, he also filed a complaint with the prosecutor-general of the Court of Appeal of Gombe against the Minister for Land Affairs, and recalled his complaint of 2009 forwarded to the prosecutor by the Minister of Justice.

– From the time when the (four) persons concerned refused their new assignments (January 2010), which they considered to be "punitive", disciplinary proceedings appear to have been initiated by the administration, which took the form of the suspension of their basic salaries from April to June 2011 on the grounds of "desertion". However, the officials say that they were never notified of the disciplinary proceedings against them, and were never given a hearing.

– On 19 April 2011, a circular from the Secretary-General for Land Affairs to all the property registrars and heads of the land registry divisions of Kinshasa declares that the officials Mr Bakaka, Mr Lukabya, Mr Kisenda and Mr Milabyo have "deserted" their posts and prohibits them from entering their workplace ("the premises of their division") pending a decision on their disciplinary procedure before the public service.

– The CCT recalls that a dramatic consequence of the situation was the death of a child of Mr Bakaka in May 2011 due to lack of medical care since, at that time, payment of the basic public service salary of the union officers had been suspended (April-June 2011).

– On 31 May 2011, the CCT in turn filed a complaint with the prosecutor-general of the Court of Appeal of Gombe against the decision of the Secretary-General for Land Affairs. No decision has yet been handed down on the complaint.

– On 20 January 2012, an official communiqué from the Secretary-General for Land Affairs indicated that the four officials were prohibited access to their offices until a final decision had been taken on their disciplinary proceedings and threatened severe penalties against any official who disturbed the proper operation of the services. In a letter in August 2012 to the Secretary-General for Land Affairs, the Minister for Land Affairs acknowledged receipt of a letter received from the inter-union committee of the Department of Land Affairs severely criticizing the attitude of the four officials against the administration and confirming the prohibition of their access to the central and district premises of the Department of Land Affairs until a final decision had been taken on their disciplinary proceedings by the disciplinary board. He also referred to a letter of 8 April 2011 from his predecessor referring the case of the four officials to the Ministry of the Public Service. However, the CCT challenges, firstly, the competence of an inter-union committee to comment on and report to the Minister on the attitude of public officials, secondly, the fault of anti-administrative behaviour, which is not included in the classification of types of fault, and finally the punishment imposed by the Minister, which is not included on the list of sanctions set out in the relevant texts.

9. According to the supporting documents provided to the mission, the union representatives indicate that they brought both administrative and judicial appeals against all the decisions affecting them, without any action being taken on any of them. Nor was any action taken further to the various communications concerning their situation sent to the Department of Land Affairs or the Ministry of the Public Service. The CCT reports that 89 communications were sent to all the administrative and judicial authorities concerned, without any action being taken. The CCT denounces the fact that neither the Ministry of

the Public Service (which is responsible for the management of public officials), nor the Ministry of Land Affairs, agreed to discuss their treatment and suspension.

10. The four union representatives who have been "denied access to their workplaces" since 2011, ask to be "reinstated" in their jobs, with payment of wage arrears and bonuses. In their view, their reinstatement would only require a decision to that effect by the Minister of the Public Service.

(b) Elements gathered from the administration

11. At its request, the mission met the representatives of the Department of Land Affairs at its headquarters in Kinshasa. The mission was received by Mr Bokoko, who described himself as the assistant to the Secretary-General of Land Affairs, and by the Director of Human Resources and a delegation from the inter-union committee.

12. Mr Bokoko indicated that the current Secretary-General and his collaborators had taken up their functions in 2009, and had therefore found upon their arrival the dispute in the Department of Land Affairs between the management and the four union representatives, Mr Bakaka, Mr Lukabya, Mr Kisenda and Mr Milabyo. According to the representative of the Department of Land Affairs, all attempts to engage in dialogue with the union representatives concerned had failed, as they systematically took action to impede the proper functioning of the Department (obstruction of entrances and public disturbances).

13. They had been subject to disciplinary proceedings, but had systematically refused to attend the meetings of the disciplinary board when requested to do so, just as they had refused their assignments. Accordingly, in view of the situation, their own union (the SLC) had removed them from union office. Despite that, they became members of another union (the CCT), but continued to use the same methods to make themselves heard, which disturbed public order, to such an extent that they lost all credibility with the workers.

14. Confronted with the obstruction, the Minister for Land Affairs referred their case to the Minister for the Public Service in 2011. They were requested to attend a disciplinary board, but failed to do so. The disciplinary board finally recommended their termination in June 2011. The four union representatives are no longer allowed to enter the premises of the Department of Land Affairs, on the orders of the Minister for Land Affairs, in view of their behaviour and the disciplinary measures taken against them.

15. The statements made by the representative of the Department of Land Affairs concerning the behaviour of the union representatives prior to their termination were confirmed by the representatives of the inter-union committee that were present. In reply to a question from the mission, the representative of the Department of Land Affairs indicated that he had no knowledge of any appeal made by the union officers to the administrative or judicial authorities.

16. The documents requested by the mission in support of the statements made by the representative of the Department of Land Affairs (documents on the disciplinary procedure, namely on the reasons, the report certifying the refusal of the union representatives to attend when requested to do so, the sanctions handed down and the action taken as a result, the recommendation of the disciplinary board of June 2011) were not provided to the mission when it was in the country, and have not been sent to the Office since.

C. Concluding remarks

17. The mission regrets that the administration has not provided in good time documents in support of the statements made by its representatives. The mission was provided with substantial documentation by the CCT in the present case to establish the chronology of events. However, the mission is bound to note the substantial divergences between the description of the events provided by the union representatives and the administration.

18. Finally, the mission observes the allegation by the union representatives of the production of false documents by the administration in this case. It also notes among the documents provided, a large number of communications concerning the case addressed since 2008 by the union representatives, individually or collectively, to the various authorities of the State (ranging from the Department of Land Affairs to the Office of the Prime Minister) and the judicial authorities (from the Prosecutor of the Republic to the President of the Court of Appeal of Gombe), on which no action appears to have been taken.

CASE NO. 2892

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

Complaint against the Government of Turkey presented by the Union of Judges and Public Prosecutors (YARGI-SEN)

Allegations: The complainant alleges that the legislation in force denies judges and public prosecutors the right to organize and that on the basis of this legislation, the Labour Court has ordered the dissolution of the complainant organization. It further alleges anti-union discrimination in the form of transfers of its leaders

926. The Committee last examined this case at its March 2013 meeting, when it presented an interim report to the Governing Body [367th Report, paras 1226–1239, approved by the Governing Body at its 317th Session (March 2013)].

927. The Government submitted additional observations in a communication dated 6 September 2013.

928. Turkey 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

929. In its previous examination of the case in March 2013, the Committee made the following recommendations [367th Report, para. 1239]:

(a) The Committee requests the Government to renew its efforts, in consultation with the social partners, so as to bring Act No. 4688 into conformity with Convention No. 87 as regards the organizational rights of judges and public prosecutors. The Committee invites the Government to avail itself of the technical assistance of the Office in this respect, if it so desires.

(b) The Committee once again urges the Government to take the necessary measures to immediately register YARGI-SEN as a trade union organization of judges and prosecutors so as to ensure that it can function, exercise its activities and enjoy the rights afforded by the Convention to further and defend the interests of these categories of

public servants. The Committee requests the Government to keep it informed of the developments in this respect.

(c) The Committee requests the Government to institute an independent inquiry into the alleged acts of anti-union discrimination suffered by the trade union leaders Dr Rusen Gültekin, Omer Faruk and Ahmet Tasurt and to provide detailed information on its outcome and any remedial steps taken should these acts be found to be of an anti-union nature.

B. The Government's reply

930. In its communication dated 6 September 2013, the Government indicates that pursuant to the third paragraph of article 51 of the Turkish Constitution, the exercise of the right to establish trade unions is regulated by the legislation in force. The Government indicates in this respect that pursuant to section 47 of the Turkish Civil Code (No. 4721), it is compulsory for organized groups of persons to meet legislative requirements in order to possess the status of legal entity. It further indicates that pursuant to section 4 of the Public Employees' Unions and Collective Agreement Act (Act No. 4688), as amended by Act No. 6289 of April 2012, trade unions are established to carry out Turkey-wide activities by public servants working in the public workplaces in a service branch and that trade unions cannot be established based on profession or workplace. While section 15 of Act No. 4688 sets out a principle according to which all public servants enjoy trade union rights, it leaves a limited number of public servants out of the scope of the Act due to the nature of their duties. According to section 15(b) of the Act, members of higher judicial organs, judges, prosecutors and those considered as members of this profession cannot establish and be members of trade unions.

931. The Government further states that it considered Article 1(1) of Convention No. 151 according to which, the extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations. It also refers to Article 8 of Convention No. 87, according to which, in exercising the rights provided for in this Convention, employees and employers and their respective organizations, like other persons or organized groups, shall respect the law.

932. The Government affirms that the application made by YARGI-SEN to the Ministry of Labour and Social Security of the Republic of Turkey was not accepted due to its being contrary to sections 4 and 15 of Act No. 4688. According to the legislation, it is not possible to establish a trade union on the basis of profession. Judges and public prosecutors and those considered to be members of this profession are therefore not allowed to establish or become members of trade unions. In these circumstances, on 28 July 2011 the Ankara 15th Labour Court ruled for the dissolution of YARGI-SEN on the grounds of violation of the ban to establish a trade union on the basis of profession. This decision was confirmed by the ruling of the Penal Department No. 9 of the Supreme Court dated 21 February 2012.

C. The Committee's conclusions

933. *The Committee takes note of the information provided by the Government. The Committee notes with regret that the Government merely reiterates that section 15(b) of Act No. 4688, as amended by Act No. 6289 of April 2012, continues to exclude judges and prosecutors from being members of trade unions and cannot establish trade unions and that pursuant to section 4, trade unions based on profession or workplace cannot be established. The Committee deeply regrets the lack of measures taken or envisaged by the Government to*

bring these provisions into conformity with the principles of freedom of association, as previously requested by the Committee. It once again recalls that it considers section 15, which denies the right to set up trade unions to judges and public prosecutors, and section 4, which prohibits the establishment of trade unions on an occupational or workplace basis, of Act No. 4688 to be contrary to the principles of freedom of association as laid down in the relevant Conventions, according to which workers "without distinction whatsoever" shall have the right to establish and join organizations "of their own choosing" without previous authorization. With regard to the allowed exceptions under Convention No. 151 referred to by the Government, the Committee points out that while Convention No. 151 recognized that certain categories of public servants (including those in highly confidential positions) may be excluded from the more general provisions guaranteeing to public servants protection against acts of anti-union discrimination or ensuring the existence of methods of participation in the determination of their conditions of employment, this exclusion cannot be interpreted as affecting or minimizing in any way the basic right to organize of all workers guaranteed by Convention No. 87. Therefore, the Committee urges the Government to renew its efforts, in consultation with the social partners, so as to bring Act No. 4688 into conformity with Convention No. 87 and to ensure the right of judges and public prosecutors to establish trade unions to defend their occupational interests. The Committee invites the Government to avail itself of the technical assistance of the Office in this respect, if it so desires and draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

934. *The Committee notes the Government's indication that as the establishment of YARGI-SEN as a trade union organization is contrary to the provisions of Act No. 4688, the Ankara 15th Labour Court ruled on 28 July 2011 for the dissolution of YARGI-SEN on the grounds of violation of the ban to establish a trade union on the basis of profession. This decision was confirmed by the ruling of the Penal Department No. 9 of the Supreme Court dated 21 February 2012. Considering that the dissolution of trade union organizations is a measure which should only occur in extremely serious cases and in no case should be based on motives which the Committee previously found to be contrary to the principles of freedom of association as laid down in the relevant Conventions, the Committee once again urges the Government to take the necessary measures to immediately register YARGI-SEN as a trade union organization of judges and prosecutors so as to ensure that it can function, exercise its activities and enjoy the rights afforded by the Convention to further and defend the interests of these categories of public servants. The Committee requests the Government to keep it informed of the developments in this respect.*

935. *The Committee deeply regrets that the Government provided no information in respect of recommendation (c). The Committee once again urges the Government to institute an independent inquiry without delay into the alleged acts of anti-union discrimination through the imposed transfer of union leaders Dr Rusen Gültekin, Omer Faruk and Ahmet Tasurt and, should these acts be found to be of an anti-union nature, to take appropriate remedial steps. It requests the Government to indicate the current status of these union leaders and to keep it informed of the outcome of the inquiry and all follow-up measures taken.*

The Committee's recommendations

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

(a) The Committee requests the Government to renew its efforts, in consultation with the social partners, so as to bring Act No. 4688 into conformity with Convention No. 87 to ensure the right of judges and public prosecutors to establish trade unions to defend their occupational interests. It invites the Government to avail itself of the technical assistance of the Office in this respect, if it so desires. The Committee draws the legislative aspect of this case to the attention of the Committee on the Application of Conventions and Recommendations.

(b) The Committee once again urges the Government to take the necessary measures to immediately register YARGI-SEN as a trade union organization of judges and prosecutors so as to ensure that it can function, exercise its activities and enjoy the rights afforded by the Convention to further and defend the interests of these categories of public servants. The Committee requests the Government to keep it informed of the developments in this respect.

(c) The Committee once again urges the Government to institute an independent inquiry without delay into the alleged acts of anti-union discrimination through the imposed transfer of union leaders Dr Rusen Gültekin, Omer Faruk and Ahmet Tasurt and should these acts be found to be of an anti-union nature to take appropriate remedial steps. It requests the Government to indicate the current status of these union leaders and to keep it informed of the outcome of the inquiry and all follow-up measures taken.

CASE NO. 3016

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
– the Union of Workers of the Ministry of Science and Technology (SITRAMCT) and
– the National Alliance of Cement Workers (ANTRACEM)

Allegations: Non-compliance with the clauses of various collective agreements and anti-union practices in a public cement enterprise

937. The complaint is contained in a communication dated 26 March 2013 and in another communication of March 2013 presented by the Union of Workers of the Ministry of Science and Technology (SITRAMCT) and by the National Alliance of Cement Workers (ANTRACEM), respectively.

938. The Government sent its observations in a communication dated 8 October 2013.

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

A. The complainants' allegations

940. In its communication dated 26 March 2013, SITRAMCT alleges that its Secretary-General, Mr Jesús Eliécer Martínez Suárez, is being subjected to persecution, degraded employment conditions and harassment, and that complaints in this regard have been filed with the labour inspectorate of the municipality of Libertador, northern sector, and with the different bodies of the Ministry of Science and Technology itself, without eliciting a response. According to the allegations, this comes as a result of industrial action to counteract moves to deprive workers of rights acquired under collective agreements.

941. This complainant organization alleges non-compliance with clauses in the agreements of 31 October 2013 as regards performance and productivity evaluations and corresponding evaluation-based wage increases or bonuses, to the detriment of the abovementioned Secretary-General. This has occurred after 13 years of continuous evaluation in which no objections have been made against him. Likewise, the evaluation-based wage increase, regulated by the framework agreement for public workers, 2000–02, and by the worker productivity evaluation manual (to be allocated according to the following scale: 20 per cent for workers with two consecutive excellent evaluations, 15 per cent for workers with a very good evaluation, and 10 per cent for workers with a good evaluation), was progressively curtailed until it was annulled. The employer claimed that this degradation in employment conditions resulted from the implementation of regulations issued by the Ministry of Planning and the Ministry of Labour.

942. In its communication of March 2013, ANTRACEM explains that the Venezuelan cement industry was nationalized in 2008, guaranteeing job security for all workers currently in employment and compliance with collective agreements. However, the organization indicates that some 32 different collective agreements expired more than four years ago. Nationalization has given rise to contractual, labour and even human rights violations, which have been reported to the Venezuelan authorities, through different State bodies (Ministry of Labour, the inspectorate, etc.) and courts, without eliciting a response.

943. More specifically, ANTRACEM mentions the situation of the United Workers Union of the enterprise C.A. Vencemos in the metropolitan district (SINTUECAV), and alleges non-compliance with provisions of collective agreements in the following cases:

1. the collective agreement signed between the enterprise C.A. Vencemos in Catia La Mar and SINTUECAV, for the period 21 December 2005 to 21 December 2008 (currently still in force as no other collective agreement has been discussed). There is failure to comply with the provisions regarding monthly union contributions; union fee deductions; meals; expenses; work on public holidays and rest days; cargo transport workers' day; backhaul trips; detours; tank offloading assistance; delay compensation paid by the enterprise to drivers when, for reasons outside their control, they are obliged to wait at the off-loading site for more than three hours; holidays; grants for workers' children; wage increases for stationary staff; overtime and night pay for stationary staff; school materials; and childbirth bonus and leave; and

2. the collective labour agreement (for the period 2007–10, currently still in force as no other agreement has been signed) between the ready-mix enterprise CEMEX Venezuela S.A.C.A. capital district, and SINTUECAV, as regards the clauses relating to trade union dues, Sunday or compulsory weekly rest-day pay, productivity bonuses (concrete plants), the Araguita sand quarry productivity bonus, meals, travel planning, basic wage or daily rate increases and holidays.

944. ANTRACEM highlights that its complaints have been submitted to the administrative and judicial authorities and to conciliation, without eliciting any reply. A collective claim was filed on 3 October 2011 before the labour inspectorate of capital district, eastern sector, and eight meetings were held to discuss the claim. In the records of those meetings, dates were mentioned for future meetings only between the parties, but the enterprise decided not to hold these.

945. In the meeting of 27 June 2012, a decision was taken by mutual accord – as stated in the record – to cancel outstanding payments and the enterprise indicated that it would pay all its debts on 31 August 2012, requesting 60 days to ensure full adherence to the agreements. On that occasion, the enterprise alluded to another meeting between the parties outside the labour inspectorate ten days later, but this never took place. There was no subsequent change in the enterprise's attitude and the union went on strike.

946. ANTRACEM also alleges a violation of freedom of association affecting the Secretary-General of SINTUECAV, Mr Ulice Rodríguez, part of whose wages and benefits (paid from 2005 to 2012) were suspended on the decision of the public management of Venezolana de Cementos S.A.C.A. which, in May 2012, arbitrarily cut his wages by nearly 80 per cent, in violation of the collective agreement. The executive committees of SINTUECAV, ANTRACEM and the National Union of Workers of Venezuela (UNETE) filed complaints against the enterprise, through the labour inspectorate, labour courts and other institutions, without the union official's rights being restored on the pretext that SINTUECAV's executive committee was allegedly in electoral default.

947. Furthermore, charges for misconduct were brought against the union official, Mr José Vale, the records and correspondence secretary, on 14 February 2013. ANTRACEM explains that an extraordinary assembly was held on 29 January 2013 to discuss the enterprise's violation of the collective labour agreement, even after the four meetings held between October 2012 and January 2013. The assembly decided that it would remain in statutory assembly until the enterprise resolved the dispute.

948. In addition, on 26 November 2012, Mr Manuel Rodríguez was given a pay cut, which violated clause No. 36 of the collective agreement (basic wage or daily rate increases). The labour inspectorate ruled itself incompetent to hear the claim and invited the worker to file his claim before the courts.

949. As regards the Union of Cement Workers of Anzoátegui State (SINTRACEA), which brings together the enterprise's workers in the production, transport and concrete sector of the States of Anzoátegui, Monagas, Sucre and Nueva Esparta, ANTRACEM alleges that the State bodies responsible for protecting labour rights, such as the Health Directorate for Workers in the States of Anzoátegui, Sucre and Nueva Esparta, attached to the National Institute for Occupational Prevention, Health and Safety (INPSASEL), and to the labour inspectorate, have ignored the complaints submitted for violations of safety and environmental regulations, which have opened the door to occupational accidents and diseases; it has repeatedly disregarded the union's executive committee, in open violation of freedom of association, and has demonstrated ongoing contempt of the decisions issued by the labour inspectorate despite its position as the State authority on labour issues. Moreover, workers have been transferred arbitrarily and illegally to positions that they did not previously occupy, in violation of the collective agreement, and other workers have suffered unjustified dismissals. Fifteen claims presented by SINTRACEA and the workers for the violation of the collective agreement are currently being examined by the labour inspectorate of Puerto la Cruz, in Anzoátegui State.

950. As regards the Union of Lara State Cement Workers (SINTRACEL) (a trade union for the enterprise's workers in production, transport and concrete centres in the States of Lara and Portuguesa), this Venezuelan enterprise filed charges for misconduct before the labour inspectorate against the union official, Mr Orlando Chirinos, union secretary and leading member of ANTRACEM, dated 27 April 2011, in violation of the collective labour agreement. It also filed charges for misconduct against Mr Waldemar Pastor Crawther Sánchez and Mr Eduardo Adrián Zerpa, both members of SINTRACEL and ANTRACEM, violating the collective labour agreement and dated 16 May 2011 and 14 February 2011, respectively.

951. In Trujillo State, Mr Alexander Santos was subjected to degradation of his employment conditions, persecution and harassment, and the ruling in his favour by the labour inspectorate of Valera in Trujillo State was held in contempt by the management of Cemento Andino and Corporación Socialista de Cemento.

B. The Government's reply

952. In its communication of 8 October 2013, the Government addresses the allegations presented by ANTRACEM and SITRAMCT, regarding the alleged violation of clauses in the collective agreement for the cement industry; violation of constitutional and labour regulations, the public service collective framework agreement and contractual benefits of a number of workers listed therein. As regards Case No. 027-2011-03-02725 of 3 November 2011, submitted by SINTUECAV to the labour inspectorate of the capital district, eastern sector, alleging the violation of clauses in the collective agreement, the Government reports that a collective claim was submitted on 3 October 2011 against what is now Venezolana de Cementos SACA. by a group of 27 workers for different alleged violations by the employer. It should be noted that the complaints were not submitted in a list of claims, but as collective claims clearly within the definition of conciliation proceedings established in the Labour Act that has now been repealed. As such, meetings were held between the parties on 29 November 2011, 14 December 2011, 18 January 2012, 6 February 2012, 14 March 2012, 11 April 2012, 2 May 2012, 13 June 2012, 27 June 2012 and 1 October 2012, given that, as previously indicated, the aforementioned complaints were not submitted as a list of claims, but as a collective claim under conciliation.

953. Having failed to achieve full conciliation in relation to the claims submitted, and considering that, at the last meeting, the union representation submitted a written document indicating that it would draw up a list of claims in accordance with sections 472, 473, 474, 476, 478, 485 and 487 of the Labour Act, and would exercise its right to strike, the labour inspectorate, under a ruling of 3 October 2012, in view of the failure to achieve conciliation, closed and filed the case in terms of the conciliation procedure. It should also be noted that during the conciliation meetings, the initial grounds for the claim were modified, thereafter constituting grounds which should be dealt with under a list of claims rather than as a collective claim.

954. The Government adds that an examination of the registry of submissions to the Chamber of Collective Rights of the abovementioned inspectorate found that from 3 October 2012 to date, the trade union has neither submitted a request for conciliation proceedings nor has it filed a list of claims to notify the employer of its failure to comply with the collective agreement.

955. As regards the charges for misconduct under Cases Nos 005-2011-01-00497 and 005-2011-01-00498, filed before the Pio Tamayo Labour Inspectorate, mid-western sector, the Government indicates that the enterprise filed the charges against Mr Eduardo Zerpa and Mr Waldemar Pastor Crawther Sánchez. The first case (Case No. 005-2011-01-00497) was

dropped on 1 August 2011, and the second case (Case No. 005-2011-01-00498) was declared inadmissible by the corresponding inspectorate.

956. As regards the complaint for degraded employment conditions presented by Mr Alexander Enrique Santos Mendoza against the enterprise Cemento Andino, SA, Case No. 066-2008-01-00091, before the labour inspectorate of Trujillo State, at its Trujillo office, the Government states that the worker submitted the complaint on 18 November 2008, requesting that his working hours be restored (in rotating shifts), as they had been changed. This claim of degraded employment conditions was duly substantiated and endorsed by the inspectorate on 28 February 2009, and an administrative ruling upheld the proceedings and ordered the reinstatement of the worker to his previous position. The administrative ruling was implemented on 13 May 2009. The inspectorate indicates that there are no further actions pending.

957. As regards the following cases: Mr Juan Manosalva, Case No. 050-2013-01-00084; Mr Henry Cardozo, Case No. 050-2013-0100095; Mr Manuel Rivas, Case No. 050-2013-01-00099; Mr Héctor Puesme, Case No. 050-2013-01-00079; Mr Miguel Gutiérrez, Case No. 050-2013-01-00082; Mr Belmar Andarcia, Case No. 050-2013-01-00086; Mr Óscar Rivero, Case No. 050-2013-01-00088; Mr Diego Tadeo, Case No. 050-2013-01-00091; Mr José Gómez, Case No. 050-2013-01-00092; Mr Gregory Vallenilla, Case No. 050-2013-01-00070; Mr José Rivas, Case No. 050-2013-01-00072; and Mr Orlando Pérez, Case No. 50-2013-01-00112, requesting the restoration of their infringed (in terms of degraded conditions) legal position, before the "Alberto Lovera" labour inspectorate, at its Barcelona office, the Government indicates that this case concerns a complaint requesting the restoration of infringed legal conditions against the employer Venezolana de Cementos S.A.C.A. This case was received by the corresponding inspectorate on 16 September 2013. The Chief Labour Inspector heard the case and submitted a report to the administration of the north-eastern sector and to the Office of the Prosecutor for Labour, in order to address some of the omissions in the workers' complaints, to enable the corresponding admission procedure, in conformity with the provisions of section 425 of the LOTT. On 26 September 2013, the workers from that enterprise, clearly identified above, appeared before the inspectorate and engaged in dialogue, during which the corrections that needed to be made to the complaints for their admission and continuation of the proceedings were explained to them. The corrections included providing the correct name of the enterprise in which they provide their services, indicating that they had been transferred, and giving details of their place of transfer.

958. As regards Case No. 050-2013-03-00248, in relation to clauses in the collective agreement, submitted by Mr Luis Alfredo Chaparro Bello before the labour inspectorate of Puerto la Cruz, the Government states that the proceedings began on 19 March 2013 on a request by Mr Luis Chaparro, in his capacity as the Secretary-General of SINTRACEA, against the aforementioned enterprise (on 21 December 2005, SINTRACEA had signed a collective agreement with the enterprise to regulate labour relations between the employer and its employees, for a period of three years, until 21 December 2008). After the start of these proceedings, the case was referred to the Office of the Attorney-General of the Bolivarian Republic of Venezuela on 31 July 2013, and is currently pending a decision on its admissibility, before proceeding to the corresponding grievance hearing.

959. As regards Case No. 050-2013-03-00014, in relation to non-compliance with contractual clauses, submitted by Mr Luis Alfredo Chaparro Bello and Mr Luis José Guerra Martínez, before the labour inspectorate of Puerto la Cruz, the Government states that the proceedings began on 8 January 2013 on a request by the aforementioned individuals, in their respective capacities as Secretary-General and correspondence secretary of SINTRACEA, against the employer Venezolana de Cementos S.A.C.A. (on 21 December 2005, SINTRACEA signed a collective agreement with the enterprise to regulate labour

relations between the employer and its employees, for a period of three years, until 21 December 2008). After the case was accepted by the inspectorate on 8 January 2013, it was referred to the Office of the Attorney-General of the Bolivarian Republic of Venezuela on 4 February 2013, and is currently pending a decision on its admissibility, before proceeding to the corresponding grievance hearing.

960. As regards Case No. 050-2013-03-00249, in relation to clauses in the collective agreement, presented by Mr Luis Alfredo Chaparro Bello, before the labour inspectorate of Puerto la Cruz, the Government states that the proceedings began on 19 March 2013 on a request by Mr Luis Chaparro Bello, in his capacity as Secretary-General of SINTRACEA, against the enterprise (on 21 December 2005, SINTRACEA signed a collective agreement with the enterprise to regulate labour relations between the employer and its employees, for a period of three years, until 21 December 2008). After the case was accepted by the inspectorate on 31 July 2013, it was referred to the Office of the Attorney-General of the Bolivarian Republic of Venezuela and is currently pending a decision on its admissibility, before proceeding to the corresponding grievance hearing.

961. The Government states that, as indicated above, the respective labour inspectorates, in keeping with their functions, have performed all the transactions and provided the protection required of them by law.

962. Lastly, the Government calls on the Committee on Freedom of Association to urge trade union organizations and complainants presenting cases before the Committee, to exhaust all internal remedies before the national authorities, in order to avoid Committee spending time on cases such as this that are being examined by the relevant authorities and which are subject to the corresponding proceedings.

C. The Committee's conclusions

963. *The Committee observes that in this case the allegations mainly refer to general non-compliance with clauses in the collective agreements for the cement industry, either in relation to union officials or members, or to workers, who are accused of (having committed) offences or who are individually being deprived of agreed benefits; and to the fact that 32 collective agreements expired over four years ago.*

964. *The Committee wishes to point out that allegations of non-compliance with collective agreements fall into the category of rights issues that must be dealt with by the parties and, in the event of dispute, by the administrative or judicial authorities, and that the Committee's remit is to determine whether the mechanisms are expeditious and have the trust of the parties.*

965. *As regards the alleged violation of a number of clauses contained in the collective agreement signed by the enterprise Venezolana de Cementos S.A.C.A., the Committee notes that the Government declares that: in October 2011, 27 workers in SINTUECAV submitted a complaint before the labour inspectorate of the capital district, eastern sector, against the enterprise under conciliation proceedings; ten meetings with the labour inspectorate had been turned down prior to 1 October 2012; full conciliation was not achieved; and the conciliation proceedings were closed following the trade union's announcement that it would file a list of claims and would exercise its right to strike (according to the complainant ANTRACEM, on 27 June 2012 the union came to an agreement with the enterprise for the payment of outstanding benefits and the enterprise announced the payment but continued to fail to meet its obligations). The Committee requests the Government to guarantee compliance with agreements that have been concluded and refers it to the last conclusion in this report.*

966. *As regards the alleged non-compliance with clauses in the collective agreement reported by the Secretary-General of SINTRACEA in March 2013, the Committee notes that the Government indicates that the complaint was submitted to the labour inspectorate of Puerto la Cruz and that once the proceedings were initiated, the case was referred to the Office of the Attorney-General of the Republic on 30 July 2013, and is currently pending a decision on its admissibility, before proceeding to the corresponding grievance hearing. As regards the enterprise's alleged non-compliance, reported in January 2013 by the Secretary-General and the correspondence secretary of SINTRACEA, the Government also indicates that the case is still pending a decision on its admissibility before the Office of the Attorney-General of the Republic, prior to holding the corresponding grievance hearing; the same is true of the claim submitted by SINTRACEA in Anzoátegui on 19 March 2013.*

967. *The Committee regrets to find an excessive delay in the administration's processing of these cases, expects that they will be concluded in the near future and refers to its general conclusions at the end of this report. The Committee emphasizes that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para.105].*

968. *As regards the alleged cases of non-compliance with collective agreements reported by 12 workers (Juan Manosalva and others) against the same enterprise, the Committee notes that the Government indicates that they submitted their complaint for the restoration of the legal conditions breached in September 2013, which led to a meeting with the labour inspectorate on 26 September 2013, which explained the corrections that were required to ensure the admissibility and the continuation of the proceedings (such as indicating where they were transferred to).*

969. *As regards the allegations in relation to the charges for misconduct brought against Mr Eduardo Adrián Zerpa and Mr Waldemar Pastor Crawther Sánchez, the Committee takes due note that the Government indicates that the first complaint was withdrawn and that the labour inspectorate declared the second case inadmissible.*

970. *The Committee observes that the Government has not sent specific information regarding some of the allegations and therefore requests it to send a detailed reply to the following allegations:*

- *the allegation presented by SITRAMCT regarding its Secretary-General, Mr Jesús Eliecer Martínez Suárez, reporting that the Ministry of Science and Technology had not paid his evaluation-based wage increase and bonus, in violation of the collective agreement in force; non-compliance with clauses in collective agreements in the following cases: (1) as regards a number of clauses in the collective agreement between the enterprise C.A. Vencemos in Catia La Mar and SINTUECAV; and (2) the collective labour agreement of the ready-mix sector enterprise Cemex Venezuela, S.A.C.A., in the capital district, and SINTUECAV, for the period 2 May 2007 to 2 May 2010 (currently in force as no other collective agreement has been discussed) as regards union dues and allowances;*

- *the suspension of part of the wages and benefits of the Secretary-General of SINTUECAV, Mr Ulice Rodríguez, which had been paid from 2005 to 2012, on a decision of the public management of Venezolana de Cementos S.A.C.A., which, in May 2012, arbitrarily cut his wages by nearly 80 per cent, in violation of the collective agreement (according to the allegations, the executive committees of SINTUECAV, ANTRACEM and UNETE have submitted complaints to the enterprise through the labour inspectorate, the labour courts and other institutions, without*

securing the restoration of the union official's rights on the pretext that SINTUECAV's executive committee was allegedly in a situation of electoral default);

- *charges for misconduct were brought against the union official, Mr José Vale, the records and correspondence secretary, on 14 February 2013 (on 29 January 2013 an extraordinary assembly had been held to discuss the enterprise's violation of the collective labour agreement and its failure to provide a reply after the four meetings held between October 2012 and January 2013; the assembly decided that it would remain in statutory assembly until the enterprise resolved the dispute);*

- *the wages of Mr Manuel Rodríguez were also cut on 26 November 2012, in violation of clause No. 36 of the collective labour agreement (basic wage or daily rate increases), and having declared itself incompetent to hear the claims the labour inspectorate invited the worker to file his claim before the courts;*

- *in Lara State, on 27 April 2011, the enterprise filed charges for misconduct before the labour inspectorate against the union official Mr Orlando Chirinos, organization secretary of SINTRACEL and leading member of ANTRACEM, in violation of the collective labour agreement. It also filed charges for misconduct against the workers Mr Waldemar Pastor Crawther Sánchez and Mr Eduardo Adrián Zerpa, both members of SINTRACEL and ANTRACEM, violating the collective labour agreement and dated 16 May 2011 and 14 February 2011, respectively;*

- *in Trujillo State, Mr Alexander Enrique Santos Mendoza was subjected to degradation of his employment conditions, persecution and harassment, and the ruling in his favour by the labour inspectorate of Valera in Trujillo State, was held in contempt by the management of Cemento Andino and Corporación Socialista de Cemento.*

971. *In general, the Committee observes that the picture that emerges from the allegations and from the Government's reply – which only addresses some of those allegations – is that administrative proceedings are very slow; they are at times blocked in institutions such as the Office of the Attorney-General of the Republic; and many of them affect union officials. It observes, moreover, that no evidence is provided of sanctions for failure to comply with collective agreements. The Committee also observes that the Government has not replied to the allegation that 32 collective agreements in the cement sector have expired and have not been renegotiated. The Committee requests the Government to take measures in consultation with the most representative trade unions and employers' organizations to promote collective bargaining in this sector and, in view of the excessive delays that it has found, to expedite disciplinary administrative proceedings in the event of repeated non-compliance with collective agreements, and it requests the Government to keep it informed of developments.*

The Committee's recommendations

972. ***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 take measures in consultation with the most representative trade unions and employers' organizations to promote collective bargaining in the cement sector (according to the allegations, 32 collective agreements have expired and have not been renegotiated) and, in view of the excessive delays that it has found, to expedite disciplinary administrative proceedings in the event of repeated non-compliance with collective agreements, and it requests the Government to keep it informed of developments.

(b) The Committee requests the Government to send a detailed reply without delay on the allegations referred to in the conclusions.

Geneva, 21 March 2014

(Signed) Professor Paul van der Heijden
Chairperson

Points for decision:

Paragraph 153
Paragraph 170
Paragraph 194
Paragraph 212
Paragraph 221
Paragraph 238
Paragraph 255
Paragraph 269
Paragraph 294
Paragraph 316
Paragraph 465
Paragraph 481
Paragraph 522
Paragraph 537
Paragraph 549
Paragraph 569
Paragraph 579
Paragraph 626
Paragraph 639
Paragraph 654
Paragraph 669
Paragraph 704
Paragraph 732
Paragraph 743
Paragraph 765
Paragraph 813
Paragraph 862
Paragraph 887
Paragraph 901
Paragraph 925
Paragraph 936
Paragraph 972