



## Governing Body

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THIRTEENTH ITEM ON THE AGENDA

### Reports of the Officers of the Governing Body

#### **First report: Complaint concerning non-observance by Bahrain of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made by delegates to the 100th Session (2011) of the International Labour Conference under article 26 of the ILO Constitution**

1. By a letter dated 15 June 2011 addressed to the Secretary-General of the International Labour Conference, a number of Workers' delegates at the 100th Session (2011) of the International Labour Conference presented a complaint under article 26 of the ILO Constitution against the Government of Bahrain for grave violations of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The letter was signed by nine titular delegates: Sir Leroy Trotman (Barbados), Mr Bheki Ntshanlitshali (South Africa), Mr Juio Roberto Gómez (Colombia), Ms Barbara Byers (Canada), Ms Raviatou Diallo (Guinea), Mr Abdessalam Jerad (Tunisia), Mr Sam Gurney (United Kingdom), Ms Sarah Fox (United States), Ms Trine Lise Sundnes (Norway); two adviser and substitute delegates: Mr Luc Cortebeeck (Belgium) and Mr Yves Veyrier (France); and one adviser: Mr Hadja Kaddous (Algeria). In a letter dated 24 August 2011, additional information was submitted.
2. At its 22nd plenary sitting held on 16 June 2011, Mr Trotman made a statement introducing briefly the complaint with the purpose of serving notice to the Government of Bahrain and to all members of the Conference.<sup>1</sup>
3. At the 311th Session of the Governing Body (June 2011), Mr Cortebeeck, the Worker Vice-Chairperson of the Governing Body, orally informed the Governing Body of the complaint presented during the Conference.

<sup>1</sup> See *Provisional Record No. 30*, International Labour Conference, 100th Session, Geneva, 2011, pp. 34–35.

4. By a communication dated 23 September 2011, the Government submitted observations regarding the complaint, which were then withdrawn through a communication of 26 October 2011. The Government submitted its revised observations in a communication dated 31 October 2011.
5. During its 312th Session (November 2011), the Officers of the Governing Body submitted a report to the Governing Body,<sup>2</sup> which took note of the proposal of the Government of Bahrain to:
  - (a) establish a tripartite committee comprised of one member nominated by the Government, one member nominated by the General Federation of Bahrain Trade Unions and one member nominated by the Bahrain employers;
  - (b) ensure that the tripartite committee has access to all relevant documents and meets weekly to address, with the assistance of independent legal advice (ILO) if requested by the Government or the workers' or employers' representatives, the issue of dismissals and reinstatements referred to in the complaint and provide minutes of its meetings to the International Labour Office;
  - (c) provide two written progress reports to the Director-General, one in January and the second in February 2012, which would include the current individual employment status of each worker who has been alleged to have been inappropriately dismissed during the relevant period. Where appropriate, any additional information would be provided before the beginning of the March 2012 Governing Body session.
6. The Governing Body, on the recommendation of its Officers, invited the Director-General to provide any requested legal guidance or support to the Government of Bahrain or the workers' or employers' representatives in this process, and to report on the situation to the Governing Body at its next session in March 2012. The Governing Body also took note that, on this basis, the Officers had deferred all consideration of the complaint until the next session of the Governing Body in March 2012.<sup>3</sup>
7. In view of the above decision of the Governing Body and in response to a request received by the General Federation of Bahrain Trade Unions (GFBTU) to the ILO Director-General, a mission, headed by Ms Doumbia-Henry, Director of the International Labour Standards Department, visited the country from 29 February to 11 March 2012. In the course of the mission, on 11 March 2012, the tripartite constituents signed a "Tripartite agreement concerning the issues raised in the framework of the Complaint concerning the non-observance by Bahrain of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made by delegates to the 100th Session (2011) of the International Labour Conference under article 26 of the ILO Constitution".
8. During its 313th Session (March 2012), the Officers of the Governing Body submitted a report to the Governing Body for its consideration. Based on the recommendation of the Officers and on the elements put forward, the Governing Body:
  - (a) suspended consideration in its current session pending completion (and submission) of the Government's and Director-General's reports to the Governing Body in its 316th Session in November 2012;
  - (b) requested the Government to continue to provide reports on the effective implementation of the Tripartite Agreement signed by the tripartite constituents of Bahrain on 11 March 2012 and to report to the Governing Body at its 316th Session (November 2012) on the progress made to fully implement its provisions;

<sup>2</sup> See GB.312/INS/16/1, para. 1.

<sup>3</sup> See GB.312/PV, para. 235.

- (c) requested the Director-General to write to the Government, the General Federation of Bahrain Trade Unions (GFBTU) and the Bahrain Chamber of Commerce and Industry (BCCI) welcoming the significant progress made and inviting them to continue in this positive direction; and
- (d) requested the Director-General to take the necessary measures to provide all the technical assistance required by the tripartite constituents, if requested by the Government or the workers' or employers' representatives, to ensure the effective implementation of the Tripartite Agreement and to report to the Governing Body at its 316th Session (November 2012) on the progress made.<sup>4</sup>
- 9.** In response to a request from the GFBTU, a mission took place from 7 to 10 October 2012, headed by Ms Doumbia-Henry, Officer-in-Charge, Standards and Fundamental Principles and Rights at Work Sector. The Government of Bahrain, the GFBTU and the BCCI provided the mission with their full support and made available to it all the information requested. Discussions on the possible adoption of a supplementary tripartite agreement were undertaken during the mission. While some progress was made, it was not possible to reach agreement in the course of the mission.
- 10.** At its 316th Session, the Governing Body, on the recommendation of its Officers:
- (a) requested the Government to provide a report on the effective implementation of the Tripartite Agreement concerning the complaint signed by the tripartite constituents of Bahrain on 11 March 2012 and to report to the Governing Body at its 317th Session (March 2013) on the progress made to implement fully its provisions;
- (b) requested the Office to take the necessary measures to provide all the technical assistance necessary to the tripartite constituents, if requested by the Government or the organizations that signed the agreement, the GFBTU or the BCCI, to ensure the effective implementation of the Tripartite Agreement, to take measures to promote a climate of genuine industrial relations, and to report to the Governing Body at its 317th Session on the progress made; and
- (c) on that basis, deferred its decision on the complaint to its 317th Session (March 2013).<sup>5</sup>
- 11.** By letters dated 10 and 11 January 2013, the Government, the GFBTU and the BCCI were invited by the Office to provide information on the effective implementation of the Tripartite Agreement and any other information they would like to draw to the attention of the Officers of the Governing Body. Reports were submitted by the Government, the GFBTU and the BCCI on 14 February, 13 February and 14 February 2013 respectively.
- 12.** In its report of 14 February 2013, the Government indicates that significant progress has been achieved, with almost 99 per cent of the cases being resolved through reinstatement, redeployment or other agreed settlements, which it hopes will be a sufficient basis to reject the complaint and remove the item from the Governing Body's agenda. It states that there is no purpose or interest to be served by maintaining the item on the agenda, and it would serve as a negative precedent to support the GFBTU in using article 26 to supplant the normal legal procedures under Bahraini law for labour disputes. It states that for many months the Government, in cooperation with the GFBTU and the BCCI, has implemented the Tripartite Agreement in good faith and taken effective action to address the concerns reflected in the complaint. Most of the cases had been resolved by November 2012, and a small number of additional cases in the private sector have been resolved since then, with the remaining cases pending in court or pending the decision of a worker to accept the re-employment or other resolution offered. This extraordinary undertaking required the

<sup>4</sup> See GB.313/PV, para. 210.

<sup>5</sup> GB.316/INS/15/1(Rev.), para. 17.

commitment of the entire Government at the highest levels. The Government considers, however, that the scope of action available to it has been exhausted. Any worker has the right to pursue remedies through the courts, and the Ministry of Labour will at the same time continue to offer all available assistance to re-employ the small number of workers who still seek a new job. Other possible disputes about equivalence of positions or other grievances must now, according to the Government, be handled as routine labour disputes under the regular procedures.

- 13.** The Government considers that the figure provided by the GFBTU at the November 2012 session of the Governing Body of 750 cases remaining unresolved was inaccurate and remains so. The Government indicates that, despite regular requests to provide names and substantiate the claims of the 750 workers, the GFBTU failed to provide any lists until 10 February (a list of 80 workers in the public sector) and 11 February 2013 (a list of 657 workers). The second list includes the 80 workers in the public sector as well as 531 in the private sector, and the rest were trainees under a government programme (Tamkeen). Upon reviewing all these cases, the Government determined that there are six valid cases identified in the public sector that had not been addressed previously, and these workers will be given reinstatement offers. There are also 15 new cases in the private sector that are being reviewed, and four cases of Tamkeen trainees that were not previously listed. The four trainees will be offered placements. According to the Government, there are only 25 new cases, and less than 4 per cent of the names on the new list are in fact previously unresolved or unaddressed cases.
- 14.** The Government indicates that the commitment had been to reinstate workers who had been dismissed as a consequence of the events in February–March 2011, when some workers in the public and private sectors decided to express their political views by attending protests and otherwise not going to work. The Government states that political protest is not a legal excuse for unauthorized absence from work – particularly for civil servants who have the obligation to fulfil their duties on behalf of the State. Despite the background to the dismissals, the Government states that it took a number of extraordinary measures to advance reconciliation, including calls from the King emphasizing the importance of reconciliation, the establishment of a special committee to review and assess whether dismissals were in accordance with the requirements of the law, and the establishment of the Bahrain Independent Commission of Inquiry (BICI). The Government considers that it has gone beyond the recommendations of the BICI report, as it has sought reinstatement, re-employment or other agreed resolution for all workers impacted who do not face criminal referral.
- 15.** The Government considers that it would not be appropriate to extend the scope of the Tripartite Agreement or the complaint to other issues. It considers that the Tripartite Agreement is the basis for further cooperation on any remaining reinstatement concerns. Regarding the state-invested enterprise reinstatements, only 1 per cent of the cases relating to the 1,765 workers at issue in these major enterprises is still before the courts or otherwise lacking an agreed solution. In one major company, 38 workers have not yet accepted offers of reinstatement because of a dispute over whether the positions being offered are equivalent to their prior positions. The Government encouraged these workers to go back to work while the issue was being negotiated in good faith. The company hired an expert international firm to determine the equivalence of the former positions with the ones offered. The company that won the tender for this work submitted a report to the company on 5 February 2013, and the company has agreed to accept and implement the recommendations. However, the workers concerned refused or did not attend interviews with the consulting firm in the course of the evaluation process. The consulting firm found that 26 jobs required some additional training, that one was not equivalent and that the rest were equivalent requiring no training. The Government states that if the workers continue to refuse the jobs, their only recourse will be the courts.

- 16.** The Government states further that it has met its commitment under the Tripartite Agreement with regard to reinstatements in small and medium-sized enterprises in the private sector, and its undertaking to find alternative employment for those who could not be reinstated to their prior positions. Of the 697 workers in this category, all but 49 have been reinstated, re-employed or otherwise had their cases resolved. The Ministry of Labour and the BCCI continue to work on job placements for these workers, and since November 2012 this number has been reduced from 63 to 49, with 21 of the remaining 49 indicating that they are not seeking new placements, although the offer of support remains available to all of them. There is no further action the Government can undertake for these 49 cases, and potential relief must be with the courts.
- 17.** Regarding compensation and social insurance benefits for workers where reinstatement was not possible, as foreseen in the Tripartite Agreement, the Government indicates that workers who were dismissed for a period of time or who were unable to be reinstated were eligible for and received unemployment insurance benefits. In addition, in some cases private employers and the workers negotiated financial settlements as compensation in lieu of reinstatement. Some workers have brought court cases seeking reinstatement or compensation, including back pay, and these claims will have to be adjudicated by the courts. The Government stresses that it did not and could not commit in the Tripartite Agreement to provide back pay for workers, and any such claim would need to be made to the courts. With respect to the criminal cases and reinstated civil servants, the Government states that of the 219 civil servants who were suspended with half pay because of criminal referrals, 64 cases remain pending. In addition, 20 medical workers were convicted and suspended without pay, but some had the criminal charges dropped and, in accordance with the Tripartite Agreement, they have been reinstated with back pay. The total number of criminal convictions resulting in civil service dismissals is 15, with two criminal cases pending, thus the number has been reduced to 17 from 64. On the commitment to reintegrate civil servants to the posts occupied prior to their dismissal or suspension, or to posts of equivalent grade, pay and benefits, the Government indicates that this has been accomplished, and that there have been very few cases of workers complaining about different positions, and those have been handled effectively through normal administrative procedures. The Government also states that there have not been any additional suspensions of civil servants.
- 18.** The Government recalls that it undertook to remove all disciplinary documents linked to the events of 2011 from personnel files of civil servants and, on 13 February 2013, the Civil Service Bureau issued a circular reminding all agencies of the need to assure the removal of all such documents and that they are legally void. Pursuant to the new Labour Law of 2012, documents relating to disciplinary action must be removed from personnel files after six months for a warning and after one year when a sanction is imposed. With regard to the major state-invested enterprises, a circular was sent to them reminding them of the law and of the removal of all related documents from personnel files. The Government indicates that it has also met its obligations regarding the withdrawal of all pending court cases, and states that it is not involved in any cases relating to dismissed workers. Regarding the commitment to work on the possibility of ratifying ILO Conventions Nos 87 and 98, by directive of the Deputy Prime Minister the Government established an inter-cabinet legal committee, chaired by the Ministry of Foreign Affairs, to review the possibility of such ratification and the committee will report its findings to the full Cabinet.
- 19.** The Government notes that two teams were established to advance the work under the Tripartite Agreement: a technical team from the Ministry of Labour, the GFBTU and the BCCI to exchange information on workers who were seeking reinstatement, the facts of those cases and the action taken; and a legal team led by the Ministry of Labour to address legal issues that arose regarding any of the cases being reviewed by the technical team.

Regular meetings were held in accordance with the Tripartite Agreement, and bilateral meetings were held between the Minister of Labour and the General Secretary of the GFBTU. Of the list of 131 public sector employees provided by the GFBTU, 95 had been reinstated or were in the process of being reinstated at the time of the November 2012 session of the Governing Body. The others listed had either resigned, retired, were not government employees, had expired temporary contracts, or had final criminal convictions. Since November, an additional seven workers have been reinstated. The cases of the 23 workers identified as being employed under temporary contracts have been further reviewed, and it was found that there were in fact 27 workers who had signed formal applications to be converted from temporary to permanent civil service positions; all of these have been reinstated as of January 2013, and the formal procedures to convert them to permanent civil service positions have been processed. The cases of 12 workers who claimed they were not in equivalent positions or had been downgraded in the same agency have been reviewed and changes in title and position authorized. Five other cases in the Ministry of Health and one in the Ministry of Education have been resolved through established procedures.

- 20.** The Government indicates that there has been no government effort or policy to roll back trade union rights or labour protections. It considers that it has enhanced the rights of workers, including domestic workers and disabled workers. It states that the new Labour Law enhances protection and provides detailed provisions on collective bargaining and labour justice and administration. The Government stresses that it remains committed to seeking a constructive relationship with the GFBTU and other unions and federations in Bahrain. On 10 February 2013, the Government launched a national political dialogue between itself and all the major political constituencies of the nation, with a view to seeking consensus on the political direction of the country.
- 21.** The GFBTU, in its report of 13 February 2013, indicates that the reasons justifying the complaint continue to be valid, particularly in the light of an absence of government policy and commitment to promote equality and non-discrimination under Convention No. 111 and ongoing discriminatory practices against Bahraini workers based on political opinion and religious beliefs. It does not consider that the Government has fully and effectively implemented the Tripartite Agreement or is committed to holding regular tripartite meetings, and the GFBTU considers that the situation is as grave and serious as it was in November 2012, and in some respects has further deteriorated. It underlines that this case has been pending for almost two years, that the matter continues to be deferred by the Governing Body, and it calls on the Governing Body to declare the complaint receivable.
- 22.** Regarding the implementation of the Governing Body's decision of November 2012 that the Office take the necessary measures to provide all the technical assistance necessary to the tripartite constituents, the GFBTU states that the Government continues to ban ILO officials, whose attendance is requested by the GFBTU, from entering Bahrain to provide such assistance. The GFBTU states that the Government has ignored the GFBTU's initiatives to find solutions based on the implementation of the Tripartite Agreement, and it calls for genuine social dialogue on the national, sectoral and enterprise levels. While three meetings of the tripartite committee have been called since November 2012, these have been fruitless, touching on marginal issues and not addressing the underlying practices of discrimination.
- 23.** According to the GFBTU, there are 657 remaining dismissed and suspended workers, compared to 750 in November 2012, which indicates that there have been no real efforts to reinstate all workers, in violation of the Tripartite Agreement. The Government refuses to provide real guarantees and assurances to promote non-discrimination in employment and occupation and to ensure the total reinstatement of the dismissed workers. The major breakthroughs with the ILO mission in February–March 2012 have come to an end and,

since May 2012, there is a regressive trend. In addition, many of those that have been reinstated have not been integrated and still face discriminatory measures and grave violations of their rights, such as demotion, denial of a decent wage, deprivation of bonuses and increments and dispossession of social security benefits. No progress has been made, according to the GFBTU, on the commitment in the Tripartite Agreement to ensuring that the integration process of the workers was smooth and to re-establish social security. In addition, GFBTU members and other Shia workers continue to be dismissed under the pretext of economic restructuring, imposed early retirement, security reasons, or labour and administrative infringements. Where workers and trade unionists attempt to resist these practices, there are immediate reprisals. The GFBTU points in this regard to a specific company where it was agreed that a job evaluation process would be undertaken to determine if workers who were to be reinstated were being offered equivalent jobs; however, the particular process implemented by the company was objected to by the company trade union as not being objective, and the trade unionists involved were immediately fired.

24. The GFBTU also refers to a number of doctors and teachers, as well as to the President of the Bahrain Teachers' Association, who remain convicted or who have been arrested and are facing arbitrary procedures of reinvestigation, salary cuts and intimidation. In addition, the GFBTU indicates that there have been a range of human rights violations against Shia activists, including jailing medics and not reinstating other medics who had been acquitted, in violation of the Tripartite Agreement, and stripping 31 Shia activists of their Bahraini nationality. Nor has progress been made in meeting the commitment under the Tripartite Agreement for the Government to remove all documents related to the 2011 events from the files of public servants. No directives or orders were given to remove these documents from the files and on the basis of these documents reinstated workers are being deprived of bonuses, promotions and other entitlements. With respect to the commitment in the Tripartite Agreement to have the documents related to the 2011 events removed from the files of reinstated private sector workers, the GFBTU considers that there have been negative developments in this regard, with no directives or orders being given, and denials of rights and entitlements due to these documents. With respect to the commitment that all parties would withdraw all lawsuits, the Government has, on the contrary, asked workers to go to court.
25. While providing a detailed breakdown of the situation of the 657 workers referred to by the GFBTU, it also stresses that the current crisis is not only about numbers. It should be seen in the context of the process of democratization, where the state institutions do not adequately represent all Bahraini citizens and the Government has constantly refused to address the root causes of the ongoing social tension, namely discrimination and exclusion of the majority of Bahrainis on religious and political grounds. The overall employment policy is discriminatory. Young people are facing restricted access to quality education based on religion and political opinion, and Shias are excluded from most decent jobs, as recruitment is done on a sectarian basis, with jobs being held for Sunnis. The GFBTU indicates that ongoing practices are further excluding Shias from the labour market, with some companies (and a specific company is mentioned) firing Shia Bahraini workers under the pretext of restructuring, dire economic crisis, or contract expiry, and at the same time announcing new job vacancies and hiring non-Bahrainis and Sunnis with lower qualifications. The GFBTU states also that the Government has used the tendering process to pressure contractors into firing qualified Shia workers.
26. With respect to the new Labour Law of 2012, the GFBTU does not consider that it addresses the issues raised in the complaint. The GFBTU states that the legislation fails to protect workers who are targeted for dismissal due to religion. While noting that the report is not aimed at the issues raised in the complaint filed before the Committee on Freedom of

Association,<sup>6</sup> it considers that violations of the right to organize and freedom of association are also relevant to the article 26 complaint as any kind of space or action to defend the workers who have been discriminated against based on religion or political opinion has been smothered. The GFBTU also notes that the Tripartite Agreement included a commitment to work on the possibility of ratifying ILO Conventions Nos 87 and 98, whereas the new legislation has instead been used to manipulate the right to organize with a view to marginalizing the GFBTU and backing an alternative government-supported, sectarian-based rival federation. By backing this federation, the Government is continuing its attempts to exclude the GFBTU from all tripartite and bipartite structures at the international, national, sectoral and enterprise levels. The GFBTU states that the Government has maintained a policy of replacing Bahraini Shia workers with migrant workers working under exploitative working conditions, and that employers are taking advantage of the vulnerable status of migrant workers to intimidate them to withdraw from the GFBTU and join the rival federation. The GFBTU also considers that a new proposed law on organizing strikes contains serious restrictions in violation of Conventions Nos 87 and 98, particularly as it criminalizes strikes and legalizes retaliation measures against striking workers. The GFBTU considers that this would be a mere legalization of the Government's practices in 2011 that resulted in the dismissal of over 4,000 workers. It indicates that there is also a proposal to amend the law on demonstrations and rallies, which would strip Shias of their ability to mobilize and engage in protests and social movements against the Government's continuous human rights violations and the lack of democracy. Without addressing the legislation, the GFBTU considers that discriminatory dismissals based on religion, political opinion or trade union activism will continue against Shia workers and deprive them of a voice.

27. The continuing discriminatory practices against workers and their representatives on grounds of religion and political opinion has, according to the GFBTU, manifested itself in a defamation campaign against the GFBTU in the media, including attacks on the ILO and the international trade union movement. This campaign has been led by, among others, pro-government members of Parliament, and makes a range of accusations, including accusing the GFBTU leadership of treason. The GFBTU brought these accusations to the attention of government officials, who advised the GFBTU to withdraw the article 26 complaint in return for a stoppage of the campaign. The GFBTU concludes that as long as discrimination is the guiding principle of government policies, dialogue will continue to manifest itself in the streets, and social peace and political stability will remain fragile.
28. The BCCI, in its report of 14 February 2013, recalls the events of February–March 2011 and indicates that the general strike called by the GFBTU was in violation of the national legislation in force at the time, and caused serious financial loss and had a severe impact on the national economy. The BCCI considers that the employers were entitled to take all measures including the discipline and dismissal of workers who were unjustifiably absent. The BCCI considers that the strike was for political purposes and therefore did not come within the scope of the Labour Law. The BCCI also enumerates the initiatives it undertook to support its members in the light of the crisis, including providing financial support and assistance to its members to improve the conditions of Bahraini companies and institutions of various categories. Based on the initiative of the BCCI, in 2011 a Joint Committee was established between the BCCI and the National Council (Shura and House of Representatives) with a view to supporting different economic sectors and to easing the financial burden on enterprises. The Joint Committee proposed a range of initiatives to address the economic situation. The BCCI also notes that it drafted a legislative decree, which was passed into law: Legislative Decree No. 48 of 2012 on the Bahrain Chamber of Commerce and Industry, issued on 1 October 2012, to strengthen the role and legal status

<sup>6</sup> Case No. 2882.

of the BCCI, and to allow it to have more effective participation in economic decision-making and in programmes and projects to enhance competitiveness.

- 29.** With respect to the dismissed workers, the BCCI indicates that in June and September 2011 its chairperson urged all commercial and industrial companies to reinstate workers who had been dismissed without the proper procedures being undertaken as required under applicable laws and regulations, whose dismissals were illegal or who were not involved in crimes or breach of duty. The chairperson further called upon large companies to follow unified standards and mechanisms approved by the Grievance Committee relating to the dismissed workers. The BCCI issued a statement on 10 November 2011 condemning the terrorist acts and acts of anarchy that it considered had been perpetrated by some groups, and stressed the need to maintain calm. The BCCI considered that it would be difficult to ask the private sector to reinstate workers who were dismissed due to the events, in the light of the continuing chaos and rioting, especially since these companies had incurred substantial losses as a result. The BCCI urged the instigators of the events to be aware of this fact and confirmed that the private sector could not reinstate workers at a time of major losses.
- 30.** Pursuant to a recommendation of an ordinary general assembly, and confirmed by the BCCI Board of Directors, two members of the Board who had been involved in the events of February–March 2011 had their membership withdrawn. At its annual general meeting in April 2012 the matter was reconsidered and the decision to dismiss the two members was revoked. With respect to the dismissed staff of the BCCI, the report indicates that these workers were dismissed due to their violation of obligations set out in the statutes of the BCCI, the Labour Law and the unified standards. Not all absent staff were dismissed, with some receiving a written warning, while others had the period of absence deducted from their annual leave. The BCCI indicates that, with a view to achieving comprehensive national reconciliation, it has reinstated all dismissed employees in the same jobs they occupied before the dismissal, at the same level of salary and benefits. In August 2012, the executive of the BCCI met with these staff members and gave them cheques for their financial entitlement. The workers signed receipts discharging the BCCI from any future claims in this regard, and the workers agreed to drop any lawsuits against the BCCI. The BCCI also dropped the lawsuits they had filed against these workers.
- 31.** The BCCI points to the Tripartite Agreement signed on 11 March 2012, which it considers to be the basis for further national action to address the remaining cases of dismissed workers. The BCCI considers that the Government has spared no efforts to bring to a close the file of the dismissed workers in the public and the private sectors. The BCCI states that, as of 1 January 2012, all dismissed workers from the public sector, where there was no court judgment issued against them, were reinstated in the same job and with their previous salary and benefits. The BCCI states that the Government's actions contributed to the return of approximately 99 per cent of dismissed workers from the major state-owned companies, including all dismissed trade unionists, and 91 per cent of the dismissed workers in the private sector companies. According to the BCCI, the tripartite constituents implemented the directives of the Government and held several meetings to develop joint action, to boost coordination and cooperation in order to achieve their interests and the interests of the nation, and to activate social dialogue. They also met to discuss ways to strengthen and consolidate relations in the light of the Tripartite Agreement, which resulted in a visit conducted by the tripartite constituents to state-owned companies and parastatals to thank them for their efforts in reinstating workers and to urge them to reinstate the rest.
- 32.** The BCCI concludes by stating that it has been given the opportunity to work in close collaboration with the Government and the GFBTU to reinstate the dismissed workers, and has taken all measures necessary to resolve the cases of dismissal, guided by the spirit of cooperation and reconciliation. The BCCI considers it a great achievement of the tripartite

parties that they successfully resolved almost 99 per cent of the more than 4,600 cases of suspension and dismissal. They suggest that the complaint be withdrawn.

**33.** Article 26 of the ILO Constitution provides as follows:

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.
2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.
3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.
4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.
5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

**34.** Convention No. 111 was ratified by Bahrain on 26 September 2000, and thus has been in force for that country since 26 September 2001. Eleven of the signatories of the complaint were Workers' delegates of their respective countries to the 100th Session of the Conference on the date of filing the complaint. They accordingly had the right to file a complaint under article 26, paragraph 4, of the Constitution if they were not satisfied that Bahrain was securing the effective observance of this Convention. This means that the conditions set forth in paragraph 1 of article 26 of the Constitution for the receivability of the complaint are satisfied.

**35.** The authors of the complaint have called upon the Governing Body to propose measures for the effective observance of this fundamental Convention in law and in practice. It is for the Governing Body to decide on this request. No discussion on the merits of the complaint is admissible at this stage. Indeed, it would be inconsistent with the judicial nature of the procedure provided for in article 26 and the following articles of the Constitution that there should be any discussion in the Governing Body on the merits of the complaint until the Governing Body has before it the contentions of the Government against which the complaint is filed, together with an objective evaluation of these contentions by an impartial body. Nor would such discussion be appropriate while a proposal to refer the complaint to a Commission of Inquiry is pending before the Governing Body or while the complaint is sub judice before a Commission of Inquiry. If there is to be a Commission of Inquiry, which is for the Governing Body to decide under article 26, paragraph 4, of the Constitution, it is when the Commission of Inquiry has reported on the merits of the complaint that the Governing Body may be called upon to take action in the matter.

**36.** It will be recalled that the Committee of Experts on the Application of Conventions and Recommendations has made observations to the Government of Bahrain regarding the observance of the Convention referred to in the complaint submitted under article 26 of the Constitution.

37. In accordance with established practice, when a Commission of Inquiry is appointed, the relevant matters before the various ILO supervisory bodies are referred to this Commission.
38. The Officers are called upon to make a determination on the receivability of the complaint and to refer the matter to the Governing Body for consideration. It will be for the Governing Body to adopt the necessary decisions as to procedure regarding the complaint submitted under article 26 of the Constitution.
39. *In the light of the information contained in this document, the Officers of the Governing Body recommend that the Governing Body decide:*
- (a) to defer the decision on the receivability of the complaint;*
  - (b) to request the Director-General to send a Special Representative to the country to hold discussions with the Government, the GFBTU and the BCCI and seek a resolution to any pending questions with technical assistance of the Office as may be required, with a view to the effective implementation of the Tripartite Agreement of 11 March 2012 in order to enable the Governing Body at its 319th Session (October 2013), on the basis of the report of the Special Representative, to consider the follow-up to be taken or whether this case calls for no further action.*