INTERNATIONAL LABOUR OFFICE

Governing Body

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Institutional Section

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FIFTEENTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

383rd Report of the Committee on Freedom of Association

Contents

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 26, 27 and 28 October 2017 and 3 November 2017, under the chairmanship of Mr Takanobu Teramoto.

2. The following members participated in the meeting: Ms Valérie Berset Bircher (Switzerland), Mr Ahmed Hadi Bunia (Iraq), Mr Etim Aniefiok Essah (Nigeria), Ms Makhata Molebatseng (Lesotho) and Ms Graciela Sosa (Argentina); Employers' group Vice-Chairperson, Mr Alberto Echavarría and members, Ms Renate Hornung-Draus, Ms Lidija Horvatic, Mr Juan Mailhos, Mr Hiroyuki Matsui and Ms Jacqueline Mugo; Workers' group Vice-Chairperson, Mr Yves Veyrier (substituting for Ms Catelene Passchier), and members, Ms Ged Kearney, Mr Gerardo Martínez, Mr Jens Erik Ohrt, Mr Kelly Ross and Mr Ayuba Wabba. The member of Colombian nationality was not present during the examination of the cases relating to Colombia (Cases Nos 3103, 2761 and 3074).

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3. Currently, there are 180 cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 27 cases on the merits, reaching definitive conclusions in 14 cases (four definitive reports and ten reports in which the Committee requested to be kept informed of developments) and interim conclusions in 13 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

Examination of cases

4. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. This effective cooperation with its procedures has continued to improve the efficiency of the Committee's work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee would therefore once again remind governments to send information relating to cases in paragraph 6 and any additional observations in relation to cases in paragraph 9 as soon as possible to enable their treatment in the most effective manner. Communications received after 5 February 2018 will not be able to be taken into account in the Committee's examination.

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

5. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2254 (Bolivarian Republic of Venezuela), 2318 (Cambodia), 2761 (Colombia), 2982 (Peru), 3074 (Colombia), 3121 (Cambodia) and 3185 (Philippines) because of the extreme seriousness and urgency of the matters dealt with therein.

Urgent appeals: Delays in replies

6. As regards Cases Nos 3067 (Democratic Republic of the Congo), 3237 (Republic of Korea) and 3249 (Haiti), the Committee observes that, despite the time which has elapsed since the submission of the complaints or the issuance of its recommendations on at least two

occasions, 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.

Observations requested from governments

7. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 2445 (Guatemala), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2902 (Pakistan), 2923 (El Salvador), 3018 (Pakistan), 3148 (Ecuador), 3183 (Burundi), 3232 (Argentina), 3255 and 3256 (El Salvador), 3257 (Argentina), 3258 (El Salvador), 3260 (Colombia), 3264 (Brazil), 3266 (Guatemala), 3269 (Afghanistan), 3270 (France), 3272 (Argentina), 3273 (Brazil), 3274 (Canada), 3275 (Madagascar), 3277 (Bolivarian Republic of Venezuela) and 3278 (Australia). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

Partial information received from governments

8. In Cases Nos 2177 and 2183 (Japan), 2265 (Switzerland), 2817 (Argentina), 2830 (Colombia), 2869 and 2967 (Guatemala), 3023 (Switzerland), 3027 (Colombia), 3042 and 3089 (Guatemala), 3091 (Colombia), 3094 (Guatemala), 3112 (Colombia), 3115 and 3120 (Argentina), 3133 (Colombia), 3135 (Honduras), 3137 (Colombia), 3139 (Guatemala), 3141 (Argentina), 3149 and 3150 (Colombia), 3158 (Paraguay), 3161 (El Salvador), 3165 (Argentina), 3178 (Bolivarian Republic of Venezuela), 3179 (Guatemala), 3192 (Argentina), 3194 (El Salvador), 3201 (Mauritania), 3203 (Bangladesh), 3210 (Algeria), 3211 (Costa Rica), 3213 (Colombia), 3215 (El Salvador), 3216 and 3217 (Colombia), 3219 (Brazil), 3221 and 3222 (Guatemala), 3228 (Peru), 3234 (Colombia), 3251 and 3252 (Guatemala), 3254 (Colombia), 3259 (Brazil), 3265 (Peru), 3283 (Kazakhstan) and 3286 (Guatemala), the Governments have sent partial information on the allegations made. The Committee requests all these Governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

9. As regards Cases Nos 3016 (Bolivarian Republic of Venezuela), 3032 (Honduras), 3068 (Dominican Republic), 3078 (Argentina), 3090 (Colombia), 3127 (Paraguay), 3144 (Colombia), 3152 (Honduras), 3157 (Colombia), 3168, 3170 and 3174 (Peru), 3187 (Bolivarian Republic of Venezuela), 3188 (Guatemala), 3190, 3193, 3195, 3197, 3199 and 3200 (Peru), 3202 (Liberia), 3204 (Peru), 3205 (Mexico), 3206 (Chile), 3207 (Mexico), 3208 (Colombia), 3209 (Senegal), 3214 (Chile), 3218 (Colombia), 3220 (Argentina), 3223 (Colombia), 3224 (Peru), 3225 (Argentina), 3226 (Mexico), 3227 (Republic of Korea), 3229 (Argentina), 3230 (Colombia), 3233 (Argentina), 3235 (Mexico), 3239 (Peru), 3240 (Tunisia), 3241 (Costa Rica), 3242 (Paraguay), 3243 (Costa Rica), 3244 (Nepal), 3245 (Peru), 3246 and 3247 (Chile), 3248 (Argentina), 3250 (Guatemala), 3253 (Costa Rica), 3261 (Luxembourg), 3262 (Republic of Korea), 3263 (Bangladesh), 3267 (Peru), 3268 (Honduras), 3271 (Cuba) and 3276 (Cabo Verde), the Committee has received the Governments' observations and intends to examine the substance of these cases as swiftly as possible.

New cases

10. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: 3279 (Ecuador), 3280, 3281 and 3282 (Colombia), 3284 (El Salvador), 3285 (Plurinational State of Bolivia), 3287 (Honduras), 3288 (Plurinational State of Bolivia), 3289 (Pakistan), 3290 (Gabon), 3291 (Mexico), 3292 (Costa Rica), 3293 (Brazil), 3294 (Argentina), 3295 (Colombia), 3296 (Mozambique) and 3297 (Dominican Republic), 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.

Article 26 complaint

11. The Committee is awaiting the observations of the Government of Belarus in respect of the measures taken to implement the recommendations of the Commission of Inquiry. In light of the time that has elapsed since its previous examination of this case, the Committee requests the Government to send its observations so that it may examine the follow-up measures taken with respect to the recommendations of the Commission of Inquiry at its next meeting.

Transmission of cases to the Committee of Experts

12. The Committee draws the legislative aspects of the following cases, as a result of the ratification of freedom of association Conventions, to the attention of the Committee of Experts on the Application of Conventions and Recommendations: 2096 (Pakistan), 2254 (Bolivarian Republic of Venezuela), 3121 (Cambodia) and 3126 (Malaysia).

Cases in follow-up

13. The Committee examined 13 cases in paragraphs 14 to 78 concerning the follow-up given to its recommendations and concluded its examination with respect to five cases: Cases Nos 2400 (Peru), 2786 (Dominican Republic), 2837 (Argentina), 2929 (Costa Rica), and 3098 (Turkey).

Case No. 2837 (Argentina)

14. The Committee last examined this case at its November 2013 meeting [see 376th Report, paras 14–20] and, on that occasion: (i) requested the Government to keep it informed of the final rulings handed down in relation to the cases mentioned concerning the lifting of the trade union immunity of the Association of State Workers (ATE) delegates, Mr Jorge Mora Pastor, Ms Susana Inés Benítez, Mr Carlos Saúl de Jesús Flores, Mr Oscar Ricardo Ochoa and Mr José Esteban Piazza; and (ii) encouraged the Government to take increased measures to promote collective bargaining in the Teatro Colón, with the intervention of the ATE, and to keep it informed of any new collective agreements concluded.

15. In communications dated 5 May 2014 and 22 February 2016, the Government provides information on the current status of the court cases brought against various ATE union leaders and delegates, and states that: (i) on 9 September 2014, the application filed by the Government of the Autonomous City of Buenos Aires (GCBA) with the Supreme Court of Justice against the decision rejecting the extraordinary federal appeal lodged by the Government, concerning the ruling that settled the summary trial between the GCBA and Máximo Parpagnoli, was declared irreceivable; (ii) on 21 August 2014, the application filed

by Mr Jorge Pastor Mora with the Supreme Court of Justice was rejected, confirming the exclusion of protection for Mr Pastor Mora; (iii) on 18 December 2014, the expiry of the authority in the case brought by the GCBA against Ms Inés Susana Benítez, by decision of the National Chamber of Appeals, was confirmed; (iv) on 7 October 2015, the ruling of the National Chamber of Labour Appeals was confirmed, excluding protection for Mr Carlos Alejandro Saúl de Jesús, owing to the extraordinary federal appeal lodged by the defendant being rejected; (v) on 20 August 2014, the Supreme Court of Justice rejected the application filed in the GCBA proceedings against Mr Oscar Ricardo Ochoa; and (vi) on 20 August 2014, the Supreme Court of Justice rejected the application filed in the GCBA proceedings against Mr José Esteban Piazza. *The Committee notes this information.*

16. *The Committee observes that the Government has not, by contrast, provided any information on the promotion of increased measures for the inclusion of the ATE in the collective bargaining of the Teatro Colón, nor on the conclusion of new collective agreements within that institution. In the absence of new information from the complainant for a period of many years, the Committee reiterates its hope that the ATE will not be excluded from the negotiations on the working conditions of workers at the Teatro Colón, and will not pursue its examination of this case.*

Case No. 2882 (Bahrain)

17. The Committee last examined this case, in which the complainants alleged serious violations of freedom of association, including massive dismissals of trade union leaders and members following their participation in a strike, threats to the personal safety of trade union leaders, arrests, harassment, prosecution and intimidation, as well as interference in trade union affairs, at its October 2016 meeting [see 380th Report, paras 87–98, approved by the Governing Body at its 328th Session]. On that occasion, the Committee made the following recommendations [see 380th Report, para. 98]:

(a) The Committee urges the Government to carry out an independent inquiry without delay into the allegations concerning Abu Dheeb's health and safety prior to his release and to provide copies of the judgments condemning Abu Dheeb and Jalila Al-Salman as well as any information relating to their appeals.

(b) Recalling that workers should have the right to form organizations of their own choosing regardless of their political opinions, the Committee requests the Government to inform the BTA that, should it wish to re-establish, it will be able to do so without encountering any legislative or administrative obstacles.

(c) Bearing in mind the Government's commitment in the 2012 tripartite agreement to work on the possibility of ratifying Conventions Nos 87 and 98, the Committee expects consultations to be held with relevant parties without delay on this and on bringing the Trade Union Act into conformity with freedom of association principles, taking into account the Committee's previous comments. The Committee draws the Government's attention to the importance of respecting its previous commitments and once again reminds the Government that it can avail itself of ILO technical assistance. The Committee requests the Government to keep it informed of any developments in this regard.

(d) The Committee requests the Government to provide detailed information on the outcome of the investigations into, and to solicit information from the employers' organization concerned on the precise allegations of anti-union discrimination and interference by the employer in trade union affairs in the following companies: ALBA, BAS, ASRY, GARMCO, BATELCO, BAPCO, BAFCO, Gulf Air, Yokogawa Middle East, KANOO cars and Sphynx cleaning. The Committee further invites the complainant to provide any additional information at its disposal in relation to its complaints of anti-union discrimination in these companies.

18. In its communication dated 14 February 2017, the Government indicates that the Special Investigation Unit – an independent and neutral authority established by the Ministry of the

Interior pursuant to high-level directives issued by His Majesty, the King of Bahrain – conducted an investigation into the health and safety of Mahdi Abu Dheeb during his detention. The investigation unit reviewed all necessary records and documents, heard statements of the parties concerned and concluded that there was lack of evidence for any of the facts alleged by Abu Dheeb. The Government states, however, that Abu Dheeb has the right to appeal this decision and submit new evidence and documents to the judicial authority, in line with article 20 of the Constitution and the applicable laws. It also informs that in addition to the Special Investigation Unit, other national institutions are engaged in the protection of prisoners' rights, such as the National Institution for Human Rights, the Prisoners and Detainees Rights Commission and the General Secretariat for Grievances, and that both Abu Dheeb and Jalila Al-Salman can bring their allegations to any of these institutions or to the court.

19. In relation to their detention, the Government also indicates that Abu Dheeb and Jalila Al-Salman both came before the courts, obtained a fair trial with the right to a defence and came before the High Criminal Court of Appeal in open session, which reduced their sentence of imprisonment from ten to five years for Abu Dheeb and from three years to six months for Jalila Al-Salman. Reaffirming that the judiciary is an independent authority pursuant to article 104 of the Constitution, the Government adds that the release of Abu Dheeb after the expiry of his sentence forms part of this case and that both trade union leaders served the sentence handed down to them and are entitled to lodge an appeal with the Court of Cassation or submit a request for rehabilitation as established under the national legislation, but have not yet done so.

20. The Government further states, in relation to the dissolved Bahraini Teachers' Association (BTA), that the authorities concerned informed the BTA's governing body that it could be re-established in accordance with the Civil Associations and Social and Cultural Clubs, Private Youth and Sports Organizations and Private Institutions Act (Act No. 21 of 1989), as amended, but that no application to this effect has been received so far.

21. Concerning the possibility of ratifying 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), the Government informs that a number of consultations were held with the competent government authorities at which the extent of the conformity of the local legislation with the provisions of the Conventions and the possibility of fulfilling all of their requirements were considered. The Government also endeavours to bring negotiations with the social partners, conducted through bilateral meetings with employers' and workers' organizations, to a conclusion and hold tripartite meetings in the near future.

22. With regard to the requested amendments of the Trade Union Act (TUA), the Government reiterates that it is a progressive law guaranteeing a number of benefits and rights for workers and regulating trade union activities in line with international labour standards, and that the introduction of amendments to national legislation entails a series of constitutional measures – amendments must be submitted to the National Assembly (the Council of Representatives and the Consultative Council) and approved before being promulgated. The Government also affirms that the vital sectors in which strikes are prohibited are set out in the Prime Minister's Decision No. 62 of 2006, which pays due regard to the international labour standards applicable in comparable laws and the guidelines of the Committee, which give member States the right to determine vital installations where stoppage of work could lead to the disruption of daily life. In line with this principle, section 21 of the TUA, promulgated by Legislative Decree No. 33 of 2002, as amended by Act No. 49 of 2006, added further services, including educational institutions and oil and gas installations to the list of essential services on grounds of public interest. The Government adds that resort to conciliation and arbitration for the resolution of collective disputes between workers and employers in these services is compulsory, which reduces resort to strikes and is consistent

with international labour standards and comparable laws on this matter. It also states that while the identification of the vital installations in which strikes are prohibited is left to the decision of the Prime Minister, this ensures that the list can be amended if one of the installations ceases to be considered as vital.

23. Finally, with regard to the allegations of anti-union discrimination and interference by the employer in trade union affairs in a number of enterprises (ALBA (enterprise A), BAS (enterprise B), ASRY (enterprise C), GARMCO (enterprise D), BATELCO (enterprise E), BAPCO (enterprise F), BAFCO (enterprise G), Gulf Air (enterprise H), Yokogawa Middle East (enterprise I), KANOO cars (enterprise J) and Sphynx cleaning (enterprise K)), the Government indicates that: (i) the relevant agencies in the Ministry of Labour and Social Affairs had been in contact with trade union representatives and leaders from enterprises (B), (C), (D), (E), (G), (H) and (I), who notified in official reports that there were at present no obstacles with company management, they were conducting their activities normally and held periodic meetings with the management; (ii) the Ministry continues to investigate the situation of trade unions in enterprises (A) and (F); (iii) the absence of trade union representatives at enterprise (K) is due to the fact that the company's business has decreased and the relationship between union representatives and the company has ended; and (iv) there appears to be no trade union at enterprise (J). The Government concludes by saying that it strives to continually reconcile trade unions and management, to maintain positive relations between the two parties with a view to ensuring continuation of work in the concerned companies and to maximize social dialogue.

24. *The Committee takes due note of the information submitted by the Government and observes in particular that the governing body of the dissolved Bahraini Teachers' Association (BTA) was informed that it could be re-established under the same legislation as previously, but no application to this effect has been received so far, and that an investigation conducted into the allegations concerning BTA President Abu Dheeb's health and safety prior to his release did not find any evidence of the alleged mistreatment. The Committee trusts in this regard that, should Abu Dheeb wish to do so, he can freely and without any obstacles challenge this decision in a court of law or resort to one of the institutions for the protection of prisoners' rights enumerated by the Government.*

25. *While further noting that, according to the Government, Abu Dheeb and Jalila Al-Salman, obtained a fair trial, served their respective sentences and did not appeal to the Court of Cassation, the Committee regrets that the Government has still not provided the Committee with copies of the judgments condemning the trade unionists, despite having been requested to do so on a number of occasions. Recalling in this regard that the detention of trade unionists on the grounds of trade union activities constitutes a serious obstacle to the exercise of trade union rights and an infringement of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 66], the Committee once again requests the Government to provide copies of the judgments handed down in the cases of Abu Dheeb and Jalila Al-Salman, as well as any information on their appeals to the Court of Cassation or their requests for rehabilitation. The Committee expects that Abu Dheeb and Jalila Al-Salman can, at present, freely exercise their trade union rights in conformity with freedom of association principles.*

26. *Welcoming the Government's indication that a number of consultations with the competent government authorities were held with regard to the possibility of ratifying Conventions Nos 87 and 98 and that further tripartite meetings with the social partners are envisaged, the Committee trusts that, in line with its commitment in the 2012 tripartite agreement to work on the possibility of ratifying these Conventions, the Government will be able to report progress in this respect in the near future.*

27. *However, the Committee notes with regret that, despite its repeated requests – in this case, as well as in cases Nos 2433 and 2552 – to amend the Trade Union Act (TUA) and the Prime*

Minister's Decision No. 62 of 2006 in order to bring them into conformity with freedom of association principles, the Government simply reiterates information provided previously concerning the determination of essential services and the difficulties in amending national legislation, without reporting any progress or indicating the steps taken or envisaged towards a legislative amendment. In these circumstances, recalling that it has been highlighting the need for legislative reform for a number of years, the Committee requests the Government once again to hold consultations with the social partners concerned without delay in order to bring the Trade Union Act into conformity with freedom of association principles, fully taking into account the Committee's previous comments. The Committee requests the Government to keep it informed of any developments in this regard and reminds it once again that it can avail itself of ILO technical assistance, if it so wishes.

28. *In relation to the allegations of anti-union discrimination and interference in trade union affairs, the Committee notes the Government's indication that while the majority of the trade unions report no issues in conducting trade union activities, some enterprises are still undergoing investigation and a few are said not to have trade unions. Bearing in mind the Government's commitment to reconcile trade unions and management and to maintain positive relations between them, as well as the lack of new information from the complainant in this regard, the Committee requests the Government to provide an update as to the situation of trade unions in the enterprises where investigation is ongoing and trusts that any remaining issues will be properly addressed without further delay. The Committee also trusts that workers in the concerned enterprises can freely exercise their right to organize and that increased social dialogue among the social partners will significantly contribute to preventing anti-union discrimination and interference in trade union affairs in the future.*

Case No. 1787 (Colombia)

29. The Committee last examined this case – which concerns murders and other acts of violence against trade union leaders and trade unionists – at its June 2014 meeting [see 372nd Report, June 2014, paras 20–25]. On that occasion, the Committee: (i) noting the low number of convictions against the instigators of the offences under consideration, urged the Government, in consultation with workers' and employers' organizations, to continue to take all necessary measures to combat impunity and to identify both the perpetrators and instigators of all the murders and acts of violence examined in this case; (ii) requested the Government to keep it informed with regard to the actions taken and the results obtained by the Inter-institutional Commission for the Promotion and Protection of Workers' Human Rights; and (iii) firmly expected that the Analysis and Context Unit, established within the Office of the Public Prosecutor, would make a significant contribution to the identification and punishment of the perpetrators of all the acts of anti-union violence.

30. The Government sent information in communications received in September 2016 and June 2017, which contain a number of elements that are common to both this case and Case No. 2761 (concerning cases of anti-union violence occurred after June 2009).

31. In its communications, the Government refers to several initiatives of the Office of the Public Prosecutor to improve the effectiveness of the investigations into anti-union violence [for further details, see the 2016 and 2017 examinations of Case No. 2761, 380th Report, October 2016, paras 244–271 and 383rd Report, October 2017, paras 171–193], including: (i) the establishment by the Office of the Public Prosecutor's National Human Rights and International Humanitarian Law Unit of a group to follow up on the investigations; (ii) the establishment in late 2016 of an elite group to expedite and follow up investigations, led by the Office of the Deputy Public Prosecutor; (iii) the development of a joint strategy to analyse information on 192 cases of death threats made against trade unionists since 2005; and (iv) the Analysis and Context Unit's prioritization of four key situations relating to the most serious violations of the right of association in Colombia from the 1990s to the present

day, which led to the reassignment of 44 investigations to the Analysis and Context Unit. The Government adds that it currently has 20 prosecutors working on cases involving the murder of trade unionists, 21 judicial assistants, 61 members of the judicial police (investigators) and 67 prosecutors trained to investigate freedom of association offences, and that the Inter-institutional Commission for the Promotion and Protection of Workers' Human Rights has been conducting a tripartite analysis of the progress made in combating impunity and violence against trade union organizations.

32. The Government states that, thanks to the abovementioned efforts, significant progress has been made in the investigations into the murders examined in this case, with the following results, updated to April 2017, being particularly noteworthy: (i) the Office of the Public Prosecutor received 832 cases of murders, 524 of which are active and in 308 of which investigations have been completed; (ii) there have been 559 convictions in 285 cases, with 436 persons convicted; and (iii) of the 524 active cases mentioned above, 209 are at the preliminary inquiry stage, 148 are at the pre-trial and investigation stage and 167 are at the trial stage. The Government also provides data on all cases of violence against trade unionists reported in the country, stating that, of 1,604 cases: (i) 954 are active, of which 524 are at the preliminary inquiry stage, 192 are at the pre-trial and investigation stage and 238 are at the trial stage; (ii) 396 cases resulted in 748 convictions; and (iii) in this context, 616 persons were convicted and 173 arrest orders issued.

33. In its communication of 2016, the Government states that, pursuant to Act No. 1448 of 2011, the trade union movement has been recognized as a victim of acts of violence and that the Government has an obligation to provide collective legal, political and ethical redress to trade unions. The Government adds that, despite reservations by the trade union movement, meetings were held in 2014 and 2015 with the President of Colombia under the programme to provide collective redress to the trade union movement and that, during those discussions, it was decided to create a high-level round table to discuss the collective redress measures to be implemented. In its communication of 2017, the Government underlines the historical nature of the peace agreements signed in 2016 with the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) and states that implementation of the agreements will entail the creation of: (i) a special peace court; (ii) transitional justice mechanisms; (iii) a truth commission; and (iv) a national commission responsible for guaranteeing human rights and eradicating human rights' abuses.

34. *The Committee recalls that this case concerns more than 1,580 cases of murders and acts of violence against Colombian trade union leaders and trade unionists that occurred between the submission of the complaint in 1994 and June 2009. The Committee is compelled to reiterate its indignation and its condemnation of those crimes and also wishes to recall that the main objective of the follow-up on this case, having already examined its substance on repeated occasions, is to put an end to impunity in each of the cases submitted to it. The Committee takes note of the information provided by the Government and, in particular, of the general statistics relating to the progress made in, and the outcomes of, the investigations into murders and other acts of violence against trade union leaders and trade unionists examined in the framework of this case and in general. With a view to assisting the Committee in its assessment of the progress made in investigating and levying punishments in the instances of acts of violence reported in this case, the Committee requests the Government to provide further details on the progress made in the investigations and judicial proceedings in general, indicating in particular the cases in which convictions had been handed down and whether the persons convicted are the perpetrators or instigators of the crimes.*

35. *The Committee notes that the data provided by the Government on all acts of anti-union violence recorded in the country shows a significant increase in convictions handed down since the previous examination of the case (748 convictions recorded in 2017 compared to 579 in 2013), together with a more limited increase in convicted persons (616 compared*

to 599 in 2013). While welcoming this progress, the Committee cannot fail to observe that these figures are still far from allowing the Committee to conclude that more than 1,500 murders and acts of violence examined by the Committee in this case have been resolved and led to conviction. The Committee therefore once again urges the Government, in consultation with workers' and employers' organizations, to continue to take all the necessary measures to combat impunity and identify both the perpetrators and instigators of the crimes that have gone unpunished.

36. *The Committee notes with interest the various initiatives taken by the Office of the Public Prosecutor to improve the effectiveness of the investigations and requests the Government to keep it informed of the results obtained in this respect. The Committee requests the Government in particular to inform it of the outcome of the reassignment of 44 investigations to the Analysis and Context Unit, concerning the most serious violations of the right to association in Colombia since the 1990s, and its impact on the identification and punishment of the perpetrators and instigators of the crimes in question. The Committee notes, however, that it still has no specific information on the inclusion of the social partners in the investigative processes in general and, in particular, on the day-to-day functioning of the Inter-institutional Commission for the Promotion and Protection of Workers' Human Rights. The Committee requests the Government to keep it informed without delay in this regard.*

37. *The Committee further notes with interest that the implementation of the peace agreements would entail the creation of several bodies to resolve and punish the outstanding acts of violence and to prevent any further human rights abuses. The Committee therefore requests the Government, in both this case and in Case No. 2761, to keep it informed of the examination by these bodies of cases of acts of anti-union violence. Lastly, the Committee requests the Government to continue to keep it informed of the progress made in the process to provide collective redress to the trade union movement.*

Case No. 2929 (Costa Rica)

38. In the previous examination of the case at its meeting in June 2014, the Committee requested the Government to inform it of the outcome of the administrative inquiry being conducted in the Dr Carlos Durán Martín Clinic concerning alleged restrictions on communication between trade union leaders and workers [see 372nd Report, para. 109].

39. In its communication dated 7 October 2014, the Government submitted the report by the medical officials of the Costa Rican Social Security Fund, indicating that a preliminary inquiry had been conducted to determine whether the alleged facts were true. The Social Security Fund stated that the commission of inquiry set up for this purpose concluded, on 20 August 2012, that there was insufficient information to launch administrative proceedings, since there was no proof of the existence of anti-union practices, nor of errors committed by the officials involved in the facts. On that basis: (i) the South Central Regional Health Services Department dismissed the union complaint on 14 September 2012; (ii) on 22 November 2012 the appeal to reverse judgment lodged by the complainant was rejected; (iii) on 11 December 2012, the appeal filed by the complainant was declared irreceivable; and (iv) on 27 December 2012, the South Central Regional Health Services Department closed the case.

40. *The Committee notes the information provided by the Government with respect to the outcome of the administrative inquiry conducted in the Dr Carlos Durán Martín Clinic and, given that the complainant has not submitted any further information regarding this case since 2012, the Committee will not pursue its examination of this case.*

Case No. 2786 (Dominican Republic)

41. The Committee last examined this case at its November 2015 session [see 376th Report, paras 338–351] and on that occasion: (i) as regards the alleged anti-union practices at the Frito Lay enterprise (hereinafter food company), the Committee urged the complainant and the Government to indicate whether or not administrative or judicial complaints had been filed and, if so, to keep it informed of their outcome; (ii) the Committee requested the Government to take the necessary measures to ensure that "self-employed" workers fully enjoy freedom of association rights, and again drew this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations; and (iii) the Committee requested the Government to keep it informed in respect of the allegations concerning flaws and a lack of impartiality in the functioning of the inspection system and recalled to the Government the availability of technical assistance from the ILO.

42. In its communication dated 2 June 2016, the Government submits a communication from the National Confederation of Trade Union Unity (CNUS) indicating that, in the context of the dispute between the food company and the National Union of Workers of Frito Lay Dominicana (Sintralaydo), it has been agreed that a joint committee on collective bargaining over working conditions will be established. Furthermore, according to the Government, the dispute in the Universal Aloe enterprise was submitted to the dispute settlement committee, which was expected to be set up at the end of June 2016.

43. In several communications sent between 11 October 2016 and 17 March 2017, the Government reports that, after it was established that Sintralaydo had the majority needed to engage in collective bargaining, a bargaining process was initiated which concluded on 16 March 2017 with the signature of a collective agreement. The Government further indicates that the disputes between the food company and Sintralaydo are a thing of the past and that the relations between the enterprise and the trade union are very good.

44. *The Committee takes note of these various pieces of information. With regard to the food company, the Committee notes that neither the Government nor the complainant have informed it of any administrative or judicial complaints filed in respect of the alleged anti-union acts. The Committee notes with satisfaction that a collective bargaining process took place leading to the signature of a collective agreement between the abovementioned enterprise and Sintralaydo.*

45. *The Committee notes that the Government has not provided information on the allegations concerning the flaws and a lack of impartiality in the functioning of the inspection system that might have arisen in various enterprises. 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 [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 817]. The Committee trusts that the Government will ensure full respect for this principle in the future and recalls to the Government the availability of technical assistance from the ILO in respect of labour inspection.*

46. *Lastly, the Committee notes the Government's statement that the dispute in one of the enterprises concerned would be submitted to a dispute settlement committee that is being set up. In the absence of any particular request by the Committee for information with regard to that enterprise, the Committee trusts that the dialogue that takes place before the dispute settlement committee will have a positive impact. In the light of the various points that have previously been examined, the Committee will not continue its examination of this case.*

Case No. 3040 (Guatemala)

47. The Committee last examined this case at its October 2015 meeting [see 376th Report, paras 472–487]. On that occasion, the Committee requested the Government to provide a copy of the agreement approved by the Supreme Court of Justice that guarantees that the criminal courts and the justices of the peace receive applications regarding collective labour rights on weekends and public holidays, in order to ensure due diligence in the examination of complaints. The Committee additionally requested the complainant to indicate whether all the union-affiliated workers of the Koa Modas company whose reinstatement had been ordered by the courts had in fact been reinstated.

48. In its two communications dated 31 January and 7 February 2017, the Government refers to the report of the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining (hereinafter "the Committee for the Settlement of Disputes"). The report mentions that, during the mediation sessions it held to discuss the dismissals of unionized workers, a schedule for their reinstatement was proposed. This has been carried out satisfactorily by the employer, given that the 42 dismissed workers were reinstated. However, the Committee for the Settlement of Disputes indicates that payment of salaries due to the reinstated workers is still pending. The Committee also notes the information provided by the Committee for the Settlement of Disputes, which states that, on 25 August 2015, it had met with Ms Verónica García and Mr Randolfo Rojas Zetino, judges of the Supreme Court Chamber for the Protection of Rights *(amparo)* and Preliminary Hearings *(antejuicio)*, to discuss the issue of the refusal of some courts to hear class actions involving economic and social matters during non-working days and hours, and that, on 7 September 2015, Agreement No. 24-2015 of the Supreme Court of Justice came into effect, a copy of which is attached.

49. *The Committee takes note with satisfaction the information provided by the Government concerning the agreement of the Supreme Court of Justice that allows the judiciary to receive applications regarding collective labour rights during weekends. The Committee also takes due note that all the union-affiliated workers whose reinstatement had been ordered by the courts were in fact reinstated. Regretting, however, that, more than four years after the dismissals, the salaries due to the reinstated workers have still not been paid, the Committee urges the Government to take the necessary measures to ensure that those payments are made as soon as possible. The Committee requests the Government to keep it informed in this regard.*

Case No. 2566 (Islamic Republic of Iran)

50. The Committee last examined this case, which concerns allegations of continued repression of teacher unionists through their arrest, interrogation, arbitrary detention, and prosecution, as well as by the prevention of participation in international meetings and violent dispersal of peaceful demonstrations at its October 2016 meeting [see 380th Report, paras 36–53]. On that occasion, bearing in mind the prosecution of many trade unionists on charges of propaganda against the State and acting against national security, the Committee requested the Government to ensure that the charges against 27 trade unionists relating to their participation in peaceful demonstrations and legitimate trade union activities between March and October 2015, are immediately dropped, that their sentences are annulled and the detained workers are released and fully compensated for any damages suffered as a result of the convictions. The Committee further requested the Government to initiate an independent inquiry into the confiscation of trade unionists' property during the raids on their residences and, if confiscations are found to be in violation of freedom of association principles, to fully compensate the parties concerned for any losses incurred. With regard to the arrest and detention of Mr Zandnia and Ms Parvin Mohammadi, the Committee urged the Government to take the necessary measures to institute an independent inquiry in order to identify their

whereabouts, determine the reasons for their detention and fully compensate them for any damage suffered. With regard to the allegations of increased persecution, intimidation and pressure on unionists and confiscation of their travel documents, the Committee requested the Government to take the necessary measures to ensure the return of Mr Abdi's and Mr Nodinian's travel documents and the free exercise of trade union rights, including participation in international trade union meetings, without pressure or threat of any kind. With regard to the allegation of violent dispersal of protests, the Committee requested the Government to take the necessary measures to ensure that trade unionists may exercise their freedom of association rights, including the right to peaceful assembly, without fear of intervention by the authorities and that the use of police and military force during protests and demonstrations is strictly limited to situations where law and order are seriously threatened, in line with the mentioned principles. In light of the seriousness of the matters raised in this case and the trade union climate in the Islamic Republic of Iran, the Committee finally urged the Government to engage with the ILO in the near future so as to identify the steps necessary to create an environment where trade union rights can be freely exercised.

51. The Government provided information relating to this case in communications dated 26 October 2016 and 9 May 2017. In the first communication the Government indicated that during recent years, particularly under the Government of President Rouhani, the teachers' salaries have significantly increased and specific attention has been paid to their welfare. According to the Government, although the policy goals of the Government in this regard are not yet reached, activists and teachers' associations have welcomed these initiatives. Teachers have a respected status in Iran which is celebrated both on Teachers' and Labour Day. However, this status does not make lawbreakers immune from prosecution. In this regard the Government refers to section 6 of the "Act concerning the activities of political parties and associations, organized groups, professional associations and guilds, Islamic associations or recognized religious minorities" which provides that groups are free to conduct activities in so far as they refrain from infringements enumerated in section 16 of this Act. The Government adds that besides the prohibited activities enumerated under section 16, according to sections 6 and 16 of the abovementioned Act, obtaining the authorization of the Ministry of Interior is a prerequisite for holding gatherings.

52. With regard to the status of some of the teachers who were arrested, charged and detained, the Government provides the following information:

– Mr Alireza Hashemi Sanjabi was pardoned and released from prison on 29 May 2016;

– Mr Esmail Abdi's case was under investigation in the Tehran Court of Appeal and no final verdict was issued as of 26 October 2016. He was released on bail pending the investigation of his case;

– Mr Ali-Akbar Baghani was sentenced to a one-year term of imprisonment and two years' exile to the city of Zabol for propaganda against the Islamic Republic. He served his prison sentence and is now in exile in Zabol. He was granted leave from prison to attend his daughter's wedding;

– Mr Mahmoud Beheshti Langroudi was sentenced to five years' imprisonment on charges of assembly, collusion and propaganda against the State. He benefited from furlough on four occasions and was on leave of absence at the time of both Government communications;

– Mr Rasoul Bodaghi was pardoned by the Supreme Leader on 31 March 2016 and released;

– Mr Abdolreza Ghanbari Chamazakti's motion for retrial was accepted and he was released on bail;

– Mr Mahmoud Bagheri was released after completing his prison term;

– Messrs Mohammadreza Niknejad and Mehdi Bohlouli were not yet arrested or in detention and no final judgment was issued in relation to their cases at the time of the Government communications; and

– Ms Parvin Mohammadi and Mr Ramin Zandnia were sentenced in the court of first instance. In its second communication the Government indicated that they were free to introduce an appeal before the Court of Appeal of Kurdistan province and that they were free on bail.

53. *The Committee notes the Government's indication that Mr Mahmoud Bagheri was released after completing his sentence and that Messrs Alireza Hashemi Sanjabi and Rasoul Bodaghi were released as they were pardoned. It notes, however, that the cases of Messrs Esmail Abdi, Abdolreza Ghanbari Chamazakti, Mohammadreza Niknejad, Mehdi Bohlouli and Ramin Zandnia, as well as that of Ms Parvin Mohammadi, were still open at the time of the Government's communications, while these trade unionists were free on bail. The Committee further notes that Mr Mahmoud Beheshti Langroudi was on leave of absence at the moment of the communication and Mr Ali-Akbar Baghani was in exile in Zabol. The Committee requests the Government to keep it updated on the status of these trade unionists and to provide detailed information on the outcome of the proceedings concerning them and to transmit a copy of the sentences issued.*

54. *With regard to the arrested and charged unionists, the Committee notes with regret that once again most of the information provided by the Government amounts to general affirmation of the charges, sentences and the dates of release if applicable, and provides no detail as to the precise circumstances and reasons for arrest and indictment or the judicial guarantees applied to the trials. The Committee notes the Government's general statement that the activities of professional associations and guilds are subject to the prohibition of acts enumerated in section 16 of the "Act concerning the activities of political parties and associations, organized groups, professional associations and guilds, Islamic associations or recognized religious minorities". The Committee notes that this legal provision prohibits acts against the independence of the country; any connection to or information exchange and collusion with embassies, missions and organs of foreign governments and foreign political parties at any level and in any form that would be detrimental to the freedom, independence, national unity or interests of the Islamic Republic of Iran; reception of financial or logistical assistance from foreigners; violation of the legitimate freedoms of others; libel, defamation and spreading of rumours; violation of national unity, separatist conspiracy and the like; attempt at sowing and intensifying divisions within the nation by taking advantage of the diversity of cultural, religious and racial backgrounds within the Iranian society; violation of Islamic standards and the foundations of the Islamic Republic; anti-Islamic propaganda and dissemination of harmful books and publications; and the unauthorized caching, possession and carrying of weapons and explosives. However, the Government does not indicate which activities of the arrested and charged trade unionists violated those prohibitions. Recalling that in cases involving the arrest, detention or sentencing of a trade union official, the Committee, taking the view that individuals have the right to be presumed innocent until found guilty, has considered that it was incumbent upon the Government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 94], it is bound to observe that the summary information provided in the Government's replies does not permit the Committee to conclude that the charges and convictions of the unionists concerned are unrelated to their exercise of legitimate trade union activities. The Committee once again urges the Government to ensure that the charges against trade unionists relating to their legitimate trade union activities are immediately dropped, that their sentences are*

annulled and that the detained workers are released and fully compensated for any damages suffered as a result of the convictions.

55. *The Committee notes with regret that the Government has not provided any information with regard to its recommendations concerning the confiscation of trade unionists' property during the raids on their residences, the confiscation of the travel documents, the increased persecution, intimidation and pressure on unionists and violent dispersal of protests [see 380th Report, paras 49–53]. It hence once again requests the Government to take the recommended measures and to keep it informed of the developments.*

56. *In view of the seriousness of the matters raised in this case and the trade union climate in the Islamic Republic of Iran, the Committee once again urges the Government to engage with the ILO in the near future so as to identify the steps necessary to create an environment where trade union rights can be freely exercised.*

Case No. 2637 (Malaysia)

57. The Committee last examined this case, which concerns the denial of freedom of association rights to migrant workers, including domestic workers, in law and in practice, at its October 2015 meeting [see 376th Report, paras 72–75]. On that occasion, the Committee reiterated its recommendation that the Government urgently take the necessary measures, including legislative, to ensure in law and in practice that domestic workers, including contract workers, whether foreign or local, may all effectively enjoy the right to establish and join organizations of their own choosing. It urged the Government once again to take the necessary steps to ensure the immediate registration of the association of migrant domestic workers so that they may fully exercise their freedom of association rights.

58. In a communication dated 21 February 2017, the Government states that Malaysian legislation allows domestic workers, including contract workers (local and foreign) to join a union. The Government also indicates that to defend their interests, these workers can use an existing union like Persatuan Agensi Pembantu Rumah Asing (PAPA) or the Malaysia National Association of Employment Agencies (PIKAP) as their platform to seek justice. The Government further states that it gave full support towards developing the "Guidelines and Tips for Employers of Foreign Domestic Helpers", in collaboration with the ILO and the tripartite constituents. These Guidelines provide a set of principles as a way of creating decent work in domestic workers' working environment. In addition, the Government indicates that the Malaysian Trade Union Congress (MTUC) has established the Migrant Resource Centre to assist and give support to workers needing legal advice, such as those in specific sectors, including domestic workers. Its purpose is to provide workers with support services through information dissemination, counselling, legal assistance, skills training, access to trade unions and migrant associations and to facilitate links to government assistance.

59. *The Committee takes note of the above information provided by the Government, including of the activities carried out in collaboration with the ILO and by the Migrant Resource Centre of the MTUC. However, it notes that while the Government indicates that workers can use existing unions in order to defend their interests, the organizations referred to by the Government in this respect are associations of employment agencies (the Malaysian Association of Foreign Maid Agencies (PAPA) and the Malaysia National Association of Employment Agencies (PIKAP)).*

60. *The Committee is bound to express its deep regret that despite its previous recommendations, no legislation or policy has been adopted to allow domestic workers to form and join organizations for the defence of their occupational interests, nor has the association of migrant domestic workers been registered. The Committee is therefore*

obliged to reiterate its recommendation that the Government urgently take the necessary measures, including legislative, to ensure in law and in practice that domestic workers, including contract workers, whether foreign or local, may all effectively enjoy the right to establish and join organizations of their own choosing. The Committee once again invites the Government to avail itself of the technical assistance of the Office in this respect. It further once again urges the Government to take the necessary steps to ensure the immediate registration of the association of migrant domestic workers so that they may fully exercise their freedom of association rights. The Committee requests the Government to keep it informed of all steps taken in relation to the rights of migrant domestic workers to form and join organizations for the defence of their occupational interests.

Case No. 3140 (Montenegro)

61. The Committee last examined this case, in which the complainant denounced the dismissal of a trade union leader in an aluminium company for the exercise of trade union activities and the refusal to let her enter trade union premises after her dismissal, at its March 2016 meeting [see 377th Report, paras 382–396, approved by the Governing Body at its 326th Session]. On that occasion, the Committee made the following recommendations [see 377th Report, para. 396]:

(a) The Committee requests the Government to ensure that bankruptcy proceedings do not lead to a situation where allegations of anti-union dismissal cannot be addressed and to fully review the claims of Ms Obradovic without delay with a view to ensuring her reinstatement as a primary remedy, should her dismissal be found to have been motivated by her trade union activities, or if the judicial authority determines that reinstatement is not possible for objective and compelling reasons, award adequate compensation to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee requests the Government to keep it informed of any developments in this regard.

(b) The Committee requests the Government to take the necessary measures without delay to ensure that the bankruptcy proceedings underway do not lead to any anti-union discrimination and that Ms Obradovic, for as long as she holds the function of President of the trade union or any other representative function, has reasonable access to the workplace and the union premises for the exercise of her functions and to facilitate agreement between the union and the employer in this regard. The Committee requests the Government to keep it informed of any developments in this respect.

62. The Government provides its observations in communications dated 5 April and 19 October 2016 and 21 June 2017. In particular, it informs that the Ministry of Economy, which is responsible for drafting the Law on Bankruptcy and implementing the Committee's recommendations, was given detailed information about the case and the Union of Free Trade Unions of Montenegro (UFTUM) was duly informed of the Government's actions in this regard. The Government further indicates that in the process of drafting the Law on Amendments to the Law on Bankruptcy and in accordance with the Committee's recommendations, the Ministry of Economy accepted amendments proposed by the UFTUM. As a result, section 79(4) of the Law on Bankruptcy now stipulates that the rights of persons employed in the course of bankruptcy proceedings shall be subject to the legislation regulating labour rights. These changes were adopted and published in the *Official Gazette* on 11 August 2016 and give effect to the Committee's recommendations by establishing the legal status of persons under bankruptcy proceedings. The Government also reiterates the information provided in its initial observations relative to the initiation of bankruptcy proceedings, dismissal of employees and the lack of authority of the Ministry of Labour and Social Welfare to act in this case due to the ongoing bankruptcy proceedings.

63. In its communication dated 17 June 2016, the complainant alleges that the Government has neither taken any action in this case nor has it indicated that it intends to do so, and that Ms Obradovic continues to be out of work. The complainant also expresses concern at the fact that the Government's interpretation of the law – the exclusive application of the Law on Bankruptcy to workers engaged in a company undergoing bankruptcy proceedings – will not be limited to this case but used for all companies in bankruptcy. This could, according to the complainant, lead to the application of this rationale to a large part of the workforce, especially considering the poor economic situation of the country where many companies are undergoing restructuring through bankruptcy proceedings, and be perceived as inviting companies in the future to enter into bankruptcy as a union-avoidance strategy. Furthermore, both the Commercial Court and the Court of Appeals of Montenegro confirmed that the rights of employees engaged for the purpose of the completion of bankruptcy proceedings are narrowed compared to the rights of employees who are employed by companies that are not in bankruptcy. These rights are limited only to wage compensation, as prescribed by the Law on Bankruptcy, thus excluding such basic rights as the right to annual leave, 40-hour working week, paid sick leave, etc. According to the complainant, this reasoning also applies to freedom of association, which would thus be restricted for workers engaged in companies undergoing bankruptcy. In addition, the complainant reiterates that although companies have an obligation to bargain with trade unions over restructuring, the aluminium company failed to do so and it estimates that this will also be the case in companies in similar situations.

64. *The Committee takes due note of the information submitted and observes that while the complainant alleges that the Government has not taken any action to implement the Committee's recommendations and denounces the exclusive application of the Law on Bankruptcy to employees engaged in companies undergoing bankruptcy running the risk of being used as a union-avoidance strategy, the Committee notes the Government's indication that, subsequently, in August 2016, on the basis of proposals made by the UFTUM, the Law on Bankruptcy was amended and now stipulates that the rights of persons employed in the course of bankruptcy proceedings shall be subject to legislation regulating labour rights. The Committee understands from the information provided that, by virtue of this amendment, the Law on Bankruptcy will no longer be the exclusive law applicable during bankruptcy proceedings but instead workers engaged in companies undergoing bankruptcy will be governed by the relevant labour laws and regulations and will thus be able to fully enjoy trade union rights, including adequate protection against all forms of anti-union discrimination and access to rapid and effective remedies against any infringements. In light of these developments and bearing in mind the concerns expressed by the complainant, the Committee trusts that workers in the aluminium company, as well as their trade union, can exercise their trade union activities freely and that recourse to bankruptcy proceedings will not be used as a union-avoidance strategy in the future. The Committee requests the Government to provide the relevant parts of the Law on Bankruptcy, as amended.*

65. *The Committee further observes that more than two years after her dismissal, Ms Obradovic has not yet been reinstated and regrets that the Government does not provide any observations on the measures taken in this regard. The Committee further notes that neither the complainant nor the Government provide any updated information as to the whether Ms Obradovic still holds her function as President of the company trade union and, if so, whether she has been granted access to the workplace and the union premises, as requested by the Committee. In light of these circumstances, the Committee requests the Government once again to ensure that the claims of Ms Obradovic are fully reviewed without delay with a view to ensuring her reinstatement as a primary remedy, should her dismissal be found to have been motivated by her trade union activities, or if the judicial authority determines that reinstatement is not possible for objective and compelling reasons, award adequate compensation to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee further trusts that, should Ms Obradovic still hold the function of President of the company trade union or any other representative function, she*

has been given reasonable access to the workplace and the union premises for the exercise of her function and invites the complainant and the Government to provide any updated information in this regard.

Case No. 2096 (Pakistan)

66. The Committee last examined this case concerning restrictions on the trade union rights of banking sector employees following the enactment of section 27-B of the Banking Companies (Amendment) Act, 1997 at its June 2016 meeting [see 378th Report, paras 72–78]. On that occasion, the Committee firmly expected the Government to promptly take all the necessary measures to ensure that this legislation is brought into conformity with the principles of freedom of association, by making it more flexible through admitting, as candidates, persons who have previously been employed in the banking company concerned and by exempting from the occupational requirement, a reasonable proportion of the officers of an organization. With regard to the alleged anti-union dismissals in 1999 of over 500 trade union leaders and members in the banking sector, the Committee firmly urged the Government to take all the necessary measures to ensure that all pending cases were resolved without delay and to provide full information on the judgments rendered. The Committee further regretted that the Government had not provided any reply to the allegations of anti-union dismissals of Messrs Assad Shahbaz Bhatti, Arshad Mehmood, Zulfiqar Awan and Mazhar Iqbal Sial submitted by the complainant in 2010 and once again urged the Government to provide its observations in this regard. With regard to the case of the deceased former president of the union, Mr Maqsood Ahmad Farooqui, in view of the information provided by the complainant that on 26 January 2011 the Punjab Labour Appellate Tribunal in Lahore decided in his favour, the Committee once again urged the Government to ensure that his heirs receive the relevant compensation.

67. In its communications dated 30 November 2016 and 16 March 2017, the complainant, United Bank Limited (UBL) Employees Union, alleges a total lack of progress in the implementation of the Committee's recommendations in this case. It emphasizes, in particular, that no measures had been taken with regard to the repealing of section 27-B and the dismissed trade unionists in the banking sector since the Committee's first examination of this case in 2001.

68. *The Committee notes with deep regret that no information has been provided by the Government on the measures taken to address the issues in this long-standing case. In particular, it notes with deep concern that after having stated on several occasions that legislative measures to repeal section 27-B were being taken, this provision, which excludes from the trade union office any "person who is not an employee of the banking company in question" remains in force. The Committee therefore once again urges the Government to take the necessary measures to amend the Banking Companies (Amendment) Act by making it more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspect of this case.*

69. *The Committee further once again firmly urges the Government to take all the necessary measures to ensure that all pending cases of dismissed workers, including Messrs Assad Shahbaz Bhatti, Arshad Mehmood, Zulfiqar Awan and Mazhar Iqbal Sial, are resolved without delay and to provide full information on the judgments rendered. The Committee further urges the Government to indicate whether the heirs of Mr Maqsood Ahmad Farooqui, the deceased former president of the union dismissed following the enactment of section 27-B, had received the relevant compensation following the decision of the Punjab*

Labour Appellate Tribunal in Lahore on 26 January 2011 deciding in his favour and to indicate the amount thereof.

Case No. 2400 (Peru)

70. In its previous examination of the case, at its October 2014 meeting, the Committee requested the Government to keep it informed of any ruling handed down by the originating court relating to the dismissal of the trade unionist, Mr William Alburquerque Zevallos. In this case, the Standing Chamber of Constitutional and Social Law of the Supreme Court of Justice of the Republic had upheld the cassation appeal and had returned the decisions to the originating court [see 376th Report, para. 87].

71. In its communication dated 25 July 2016, the Government reports that on 10 June 2015, in Decision No. 65, a copy of which was sent to the Committee, the Second Temporary Labour Court of Piura, set up to reduce the backlog of cases, ruled that the case filed by Mr Alburquerque Zevallos claiming wrongful dismissal and the payment of outstanding wages was unfounded. The Court found that the claimant was charged with serious misconduct and "in the absence of evidence to disprove … his lack of responsibility for the charges brought against him relating to failure to comply with his employment obligations and supplying false information to his employer, it is not demonstrated that there are grounds to render the dismissal for serious misconduct null and void". The Specialized Labour Chamber of Piura upheld the first instance ruling on 11 August 2015, and on 16 May 2016 the Second Provisional Chamber of Constitutional and Social Law of the Supreme Court of Justice dismissed the cassation appeal filed by Mr Alburquerque Zevallos against the decision of 10 June 2015.

72. *The Committee takes note of the information provided by the Government. Noting that all the judicial proceedings relating to the dismissal of Mr William Alburquerque Zevallos have been concluded, the Committee will not continue its examination of the present case.*

Case No. 2856 (Peru)

73. In its previous examination of the case, at its March 2014 meeting, the Committee requested the Government to keep it informed of the outcome of the cassation appeal lodged by the Callao regional government against the second instance court order for the reinstatement of Ms Clara Tica in her post [see 371st Report, paras 115–117].

74. In its communication dated 11 July 2017, the Government again states that, on 7 August 2012, in Decision No. 12, the Third Civil Court ordered the reinstatement of Ms Clara Tica in her post. However, as there were no vacant posts, arrangements were made to reinstate her on a provisional basis under a service provider contract, in accordance with the third transitional provision of Act No. 28411 (General Act on the Budgetary System). The Government states that as there has been no vacancy to date that would allow for the reinstatement of Ms Clara Tica in her original post or in another post at a similar level, the worker's employment situation has not changed.

75. *The Committee regrets to note that, despite four years having elapsed since the appeal was lodged, no information is available on the matter. The Committee also regrets to note that, seven years after her dismissal, Ms Clara Tica has still not been reinstated in her original post or to another post at a similar level, despite there being a court decision in her favour. In this respect, the Committee recalls that, as was stated in its previous examination of the case, if the post occupied by the worker has been eliminated, she or he should be reinstated in a comparable post if the dismissal constituted an act of anti-union discrimination [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 847]. The Committee is bound to reiterate its previous recommendations*

and firmly expects that the Government will without delay provide it with information with respect to the resolution of Ms Clara Tica's situation.

Case No. 3098 (Turkey)

76. The Committee last examined this case, which concerns allegations of illegal arrests, detentions and prosecution of several trade union leaders for engaging in trade union activities and abusive use of criminal law to suppress independent trade union movement, at its June 2016 meeting. On that occasion, it presented a report to the Governing Body in which it requested the Government to indicate whether charges were initiated against TÜMTIS National President Kenan Ozturk and Ankara Branch President Nurettin Kilicdogan for allegedly criticizing the new labour law and holding an illegal demonstration and, if so, to provide detailed information in this regard [see 378th Report, para 820].

77. In its communication dated 14 July 2017, the Government indicates that a criminal case was filed in 2013 against TÜMTIS President, Mr Kenan Öztürk, and Head of its Branch Office in Ankara, Mr Nurettin Kiliçdogan, for violating Act No. 2911 on meetings and demonstrations and that on 29 January 2015, the 11th Criminal Court of Ankara acquitted both union officials.

78. *The Committee takes due note of this information.*

* * *

79. Finally, the Committee requests the Governments and/or complainants concerned to keep it informed of any developments relating to the following cases.

Case	Last examination on the merits	Last follow-up examination
1865 (Republic of Korea)	March 2009	June 2017
2086 (Paraguay)	June 2002	March 2017
2362 (Colombia)	March 2010	November 2012
2434 (Colombia)	March 2009	November 2009
2528 (Philippines)	June 2012	November 2015
2603 (Argentina)	November 2008	November 2012
2652 (Philippines)	March 2010	November 2015
2684 (Ecuador)	June 2014	June 2017
2694 (Mexico)	November 2013	June 2017
2700 (Guatemala)	March 2011	March 2016
2710 (Colombia)	November 2011	June 2017
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2723 (Fiji)	June 2016	March 2017
2743 (Argentina)	March 2013	November 2015
2750 (France)	November 2011	March 2016
2755 (Ecuador)	June 2010	March 2011
2797 (Democratic Republic of the Congo)	March 2014	–
2816 (Peru)	March 2013	March 2014
2850 (Malaysia)	March 2012	June 2015
2871 (El Salvador)	June 2014	June 2015

Case	Last examination on the merits	Last follow-up examination
2872 (Guatemala)	November 2012	–
2916 (Nicaragua)	June 2013	November 2015
2925 (Democratic Republic of the Congo)	March 2013	March 2014
2960 (Colombia)	March 2015	–
2976 (Turkey)	June 2013	March 2016
2977 (Jordan)	March 2013	November 2015
2889 (Pakistan)	March 2016	–
2954 (Colombia)	June 2014	–
2988 (Qatar)	March 2014	June 2017
2994 (Tunisia)	June 2016	–
2998 (Peru)	March 2014	March 2015
3003 (Canada)	March 2017	–
3011 (Turkey)	June 2014	November 2015
3019 (Paraguay)	March 2017	–
3020 (Colombia)	November 2014	–
3021 (Turkey)	November 2014	June 2017
3024 (Morocco)	March 2015	March 2016
3036 (Bolivarian Republic of Venezuela)	November 2014	–
3039 (Denmark)	November 2014	June 2016
3041 (Cameroon)	November 2014	–
3046 (Argentina)	November 2015	–
3047 (Republic of Korea)	March 2017	–
3054 (El Salvador)	June 2015	–
3055 (Panama)	November 2015	–
3061 (Colombia)	March 2017	–
3069 (Peru)	June 2017	–
3083 (Argentina)	November 2015	–
3100 (India)	March 2016	–
3106 (Panama)	November 2016	–
3107 (Canada)	March 2016	–
3110 (Paraguay)	June 2016	–
3114 (Colombia)	June 2016	–
3123 (Paraguay)	June 2016	–
3128 (Zimbabwe)	March 2016	–
3131 (Colombia)	June 2017	–
3146 (Paraguay)	June 2017	–
3159 (Philippines)	June 2017	–
3162 (Costa Rica)	June 2017	–
3164 (Thailand)	November 2016	–
3169 (Guinea)	June 2016	–

Case	Last examination on the merits	Last follow-up examination
3176 (Indonesia)	November 2016	–
3182 (Romania)	November 2016	–
3191 (Chile)	March 2017	–

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

81. In addition, the Committee has received information concerning the follow-up of Cases Nos 2153 (Algeria), 2341 (Guatemala), 2488 (Philippines), 2512 (India), 2533 (Peru), 2540 (Guatemala), 2583 and 2595 (Colombia), 2656 (Brazil), 2673 (Guatemala), 2679 (Mexico), 2699 (Uruguay), 2706 (Panama), 2708 (Guatemala), 2716 (Philippines), 2719 (Colombia), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2752 (Montenegro), 2753 (Djibouti), 2756 (Mali), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2768 (Guatemala), 2789 (Turkey), 2793 (Colombia), 2807 (Islamic Republic of Iran), 2827 (Bolivarian Republic of Venezuela), 2833 (Peru), 2840 (Guatemala), 2844 (Japan), 2852 (Colombia), 2854 (Peru), 2860 (Sri Lanka), 2870 (Argentina), 2883 (Peru), 2896 (El Salvador), 2900 and 2915 (Peru), 2917 (Bolivarian Republic of Venezuela), 2924 (Colombia), 2934 (Peru), 2937 (Paraguay), 2944 (Algeria), 2946 (Colombia), 2948 (Guatemala), 2952 (Lebanon), 2962 (India), 2966 (Peru), 2973 (Mexico), 2979 (Argentina), 2980 and 2985 (El Salvador), 2987 (Argentina), 2991 (India), 2992 (Costa Rica), 2995 (Colombia), 2999 (Peru), 3006 (Bolivarian Republic of Venezuela), 3017 (Chile), 3022 (Thailand), 3026 (Peru), 3030 (Mali), 3033 (Peru), 3035 (Guatemala), 3043 (Peru), 3051 (Japan), 3057 (Canada), 3058 (Djibouti), 3059 (Bolivarian Republic of Venezuela), 3064 (Cambodia), 3065 and 3066 (Peru), 3072 (Portugal), 3075 (Argentina), 3077 (Honduras), 3085 (Algeria), 3087 (Colombia), 3093 (Spain), 3096 (Peru), 3097 (Colombia), 3101 (Paraguay), 3102 (Chile), 3104 (Algeria), 3142 (Cameroon), 3154 (El Salvador), 3171 (Myanmar), 3172 (Bolivarian Republic of Venezuela), 3177 (Nicaragua), 3180 (Thailand) and 3231 (Cameroon), which it will examine as swiftly as possible.

CASE NO. 2318

INTERIM REPORT

Complaint against the Government of Cambodia presented by the International Trade Union Confederation (ITUC)

Allegations: The murder of three trade union leaders and the continuing repression of trade unionists in the country

82. The Committee has already examined the substance of this case on numerous occasions, most recently at its October–November 2016 meeting where it issued an interim report, approved by the Governing Body at its 328th Session [see 380th Report, paras 99–117].

83. The Government sent its observations in a communication dated 30 May 2017.

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

Convention, 1949 (No. 98). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

85. In its previous examination of the case, the Committee made the following recommendations [see 380th Report, para. 117]:

(a) The Committee once again urges the Government to keep it duly informed of any development with regard to the investigation into the murder of Chea Vichea and to ensure that the perpetrators and the instigators of this heinous crime are brought to justice.

(b) The Committee expects that the Inter-Ministerial Commission for Special Investigations will thoroughly review the allegations of torture and other ill-treatment by police, intimidation of witnesses and political interference with the judicial process during the prosecution of Born Samnang and Sok Sam Oeun, and ensure an investigation into all the abovementioned allegations, and requests the Government to keep it informed of the outcome and any measure of redress provided for the wrongful imprisonment of Born Samnang and Sok Sam Oeun.

(c) Recalling that it had previously deplored the fact that Mr Thach Saveth was arrested and sentenced for the premeditated murder of trade unionist Ros Sovannareth in a trial characterized by the absence of full guarantees of due process necessary to effectively combat impunity for violence against trade unionists, the Committee expects that the Inter-Ministerial Commission for Special Investigations will thoroughly review the circumstances surrounding his trial so as to ensure that justice has been carried out and that he has been able to exercise his right to a full appeal before an impartial and independent judicial authority and requests the Government to keep it informed of developments in this regard.

(d) With regard to the murder of Mr Hy Vuthy, the Committee takes note of the statement that the Inter-Ministerial Commission for Special Investigations is still investigating the case and once again urges the Government to keep it duly informed of any progress made in this regard.

(e) The Committee urges the Government to indicate whether Mr Chhouk Bandith, who is serving his jail term, has paid the compensation awarded to the three victims as ruled by the Svay Rieng Provincial Court.

(f) The Committee request the Government to inform it of any development with regard to its investigation into the assault of trade unionists of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) and of the Free Trade Union of the Suntex Garment Factory (FTUSGF) reported in 2006, as well as into the current employment status of three activists of the Free Trade Union of Workers of the Genuine Garment Factory (FTUWGGF) who were allegedly dismissed in 2006 following their convictions for acts undertaken in connection with a strike at the Genuine Garment Factory.

(g) While the Committee appreciates the renewed commitment of the Government and its efforts to solve the pending issues still under examination, it must however express its concern with continued delays and with the lack of concrete results in this case despite the time that has passed since its last examination. The Committee is bound to once again express the firm expectation that the Government will take swift action and will be able to report fully on the progress made by the Inter-Ministerial Commission concerning the reopened investigations into the murders of trade union leaders, as this shall have a significant impact on the impunity prevailing in the country and on the exercise of trade union rights of all workers.

(h) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. The Government's reply

86. In its communication dated 30 May 2017, the Government indicates that the Inter-Ministerial Commission for the Special Investigation on Case No. 2318 concerning the murder of trade union leaders, namely Mr Chea Vichea, Mr Ros Sovannareth and Mr Hy Vuthy conducted its second meeting on 24 January 2017 to discuss the progress of the Commission and its challenges. The Government states that after hearing the challenges raised by its members, the Commission decided to set up a tripartite subcommission with the hope of having better access to evidence and information from all stakeholders that may help the Commission to expedite its investigation.

87. The Government further indicates that following the establishment of the Inter-Ministerial Commission for Special Investigations, the National Police Commissariat also created an Investigation Taskforce through Decision No. 464 SSR dated 5 October 2015. The Taskforce is chaired by the Phnom Penh Municipal Police Commissioner.

88. With regard to the murder of Mr Chea Vichea, the Government indicates that based on the report of the National Police Commissariat to the Minister of Interior (Deputy Prime Minister) dated 13 April 2017, the Phnom Penh Municipal Court ordered the Judicial Police to reinvestigate the case in order to find the perpetrator as well as to collect further evidence following the temporary release of the suspects Mr Born Samnang and Mr Sok Sam Ouen. The Government states that the reinvestigation has commenced but has encountered an obstacle as the Taskforce did not receive sufficient cooperation from Mr Chea Vichea's brother, Mr Chea Mony.

89. With regard to the case of Ros Sovannareth, the Government recalls that Mr Thach Saveth had been sentenced to prison for 15 years by a judgment of the Phnom Penh Municipal Court in February 2005, and had filed an appeal to the Court of Appeals, which upheld the judgment of the Municipal Court. Mr Thach Saveth subsequently filed an appeal to the Supreme Court in February 2009, which nullified the judgment of the Court of Appeals, ordered that Court to rehear the case and released Mr Thach Saveth on bail. The Government indicates that the case is currently under the legal proceedings of the Court of Appeals.

90. Concerning the case of Mr Hy Vuthy, the Government states that Mr Chan Sophon, the suspect who was arrested in September 2013 in accordance with an arrest warrant issued by the Phnom Penh Municipal Court in April 2012, was released in February 2014. The Government states that the case is currently under the legal proceedings of the Phnom Penh Municipal Court, but that no order has been made to the Judicial Police to do a reinvestigation.

91. Concerning the case of Mr Chhouk Bandith, the Committee notes the Government's statement that, based on the report of the Svay Rieng Provincial Commissariat of Police of 9 February 2017, Mr Chhouk Bandith has paid compensation to the victims as ordered by the Supreme Court in October 2015. The Government indicates that he has also finished his term in jail.

92. The Government states that, concerning the assault of 13 trade union activists as well as the dismissal of three trade union activists, officials from the Department of Labour Disputes failed to meet with any of those workers although several visits were made to the factories. The Government states that it has tried to contact the FTUWKC representatives of those factories in order to get the contact addresses of those workers, but that no response has been received.

The Committee's conclusions

93. *The Committee recalls that it has considered this serious case on numerous occasions which relates, inter alia, to the murder of the trade union leaders, Mr Chea Vichea, Mr Ros Sovannareth and Mr Hy Vuthy, and to the climate of impunity that exists surrounding acts of violence directed towards trade unionists.*

94. *The Committee takes due note of the Government's indication that the National Police Commissariat created an Investigation Taskforce, chaired by the Phnom Penh Municipal Police Commissioner in October 2015. The Committee also notes the information provided by the Government concerning the work of the Inter-Ministerial Commission for Special Investigations on Case No. 2318. Particularly, it notes that it conducted its second meeting on 24 January 2017 to discuss the progress of the Commission and its challenges. In this respect, the Committee recalls that the Inter-Ministerial Commission for Special Investigations was established in August 2015, and that the Government had previously indicated that the Commission was to have regular meetings every three months to review the progress made for each case.*

95. *The Committee notes the Government's indication that, after hearing the challenges raised by its members, the Inter-Ministerial Commission decided to set up a tripartite subcommission with the hope of having better access to evidence and information from all stakeholders that may help the Commission to expedite its investigation. The Committee recalls that the Government had previously indicated, in its communication of October 2016, that the establishment of a tripartite group attached to the Commission was under way. However, it notes the information provided by the Government representative to the Conference Committee on the Application of Standards in June 2017 that the tripartite subcommission had not yet been established.*

96. *While taking due note of the information provided by the Government, the Committee must express its deep concern with respect to the lack of progress in the work of the Inter-Ministerial Commission for Special Investigations, more than two years after its establishment, the delay in the establishment of the tripartite subcommission to expedite the investigations and at the lack of concrete results concerning the investigations requested. Recalling the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes in order to end the prevailing situation of impunity in the country with regard to violence against trade unionists, the Committee urges the competent authorities to take all necessary measures to expedite the process of investigation, including by ensuring the effective functioning of the Inter-Ministerial Commission for Special Investigations and the establishment and operation of the tripartite subcommission. It requests the Government to report on concrete progress in this regard, and to provide information on the activities and progress of the Investigation Taskforce created by the National Police Commissariat.*

97. *Concerning the murder of Mr Chea Vichea, the Committee notes the information provided by the Government that the Phnom Penh Municipal Court had ordered the Judicial Police to reinvestigate the case in order to find the perpetrator, that the reinvestigation had commenced and that the Taskforce had encountered an obstacle as it did not receive sufficient cooperation from Mr Chea Vichea's brother. In the event that this lack of cooperation is due to concerns for personal safety, the Committee requests the Government to take any measures necessary to guarantee his safety and that of those who may be in a position to assist the investigation. In addition, the Committee urges the Government to take all necessary measures to advance the investigation initiated, regardless of the cooperation of the victim's relatives, to ensure that the perpetrators and the instigators of this heinous crime are brought to justice. It once again urges the Government to keep it duly informed of any developments with regard to the investigation into the murder of Mr Chea Vichea.*

98. *The Committee notes the Government's statement that the Municipal Court ordered the Judicial Police to collect more evidence following the temporary release of the suspects, Mr Born Samnang and Mr Sok Sam Ouen, but observes that the Government does not indicate if the reinvestigation, or the work of the Inter-Ministerial Commission for Special Investigations, will include an examination of the allegations of torture and other ill-treatment by police of those two men, intimidation of witnesses and political interference with the judicial process. With respect to the Government's indication that the release of the two men is temporary, the Committee recalls that it had previously noted the Supreme Court judgment definitively acquitting Mr Born Samnang and Mr Sok Sam Oeun and the dropping of all charges against them [see 370th Report para. 161]. Recalling that it had previously called for an independent and impartial investigation into the prosecution of Mr Born Samnang and Mr Sok Sam Oeun, the Committee expects that the Inter-Ministerial Commission for Special Investigations will thoroughly review this matter and ensure an investigation into the allegations referenced above, and requests the Government to keep it informed of the outcome and any measure of redress provided for the wrongful imprisonment of those two men. It further requests the Government to provide further information on the nature of their release from prison, indicating whether this release is temporary.*

99. *With respect to the murder of Mr Ros Sovannareth, the Committee notes the Government's indication that the case of Mr Thach Saveth is currently under the legal proceedings of the Court of Appeals, following the judgment of the Supreme Court that nullified the Court of Appeals previous judgment, ordered that Court to rehear the case and released Mr Thach Saveth on bail. The Committee recalls that the Supreme Court ruling was handed down in 2011, and regrets that the Government has not provided information on any investigative activities undertaken by the Inter-Ministerial Commission for Special Investigations with respect to the case. Recalling that it had previously deplored the fact that Mr Thach Saveth was arrested and sentenced for the premeditated murder of trade unionist Mr Ros Sovannareth in a trial characterized by the absence of full guarantees of due process necessary to effectively combat impunity for violence against trade unionists, the Committee expects that the Inter-Ministerial Commission for Special Investigations will thoroughly review the circumstances surrounding his trial so as to ensure that justice has been carried out and that he has been able to exercise his right to a full appeal before an impartial and independent judicial authority. It requests the Government to keep it informed of developments in this regard, including the outcome of the legal proceedings currently before the Court of Appeals and the outcome of the investigation by the Inter-Ministerial Commission for Special Investigations.*

100. *With regard to the murder of Mr Hy Vuthy in 2007, the Committee notes the Government's statement that the case is currently under the legal proceedings of the Phnom Penh Municipal Court, but that no order has been made to the Judicial Police to do a reinvestigation. The Committee once again urges the Government to keep it informed of any developments in this respect, including the outcome of the legal proceedings of the Phnom Penh Municipal Court and the outcome of the work by the Inter-Ministerial Commission for Special Investigations. It also requests the Government to provide information as to why no reinvestigation of the case has been ordered.*

101. *Concerning Mr Chhouk Bandith, the former governor of Bavet City who had been sentenced to an 18-month jail term in relation to the shooting of three workers engaged in a strike, the Committee notes the information provided by the Government that he had, by February 2017, paid the compensation that had been ordered by the Supreme Court to the three workers shot and injured in 2012 and finished his jail term.*

102. *With respect to the investigation of the assault of 13 trade union activists of the FTUWKC and of the FTUSGF (Lay Sophead, Pul Sopheak, Lay Chhamroeun, Chi Samon, Yeng Vann Nuth, Out Nun, Top Savy, Lem Samrith, Chey Rithy, Choy Chin, Lach Sambo, Yeon Khum and Sal Koem San) alleged by the ITUC in 2007, and the alleged dismissal of three trade*

union activists of the FTUWGGF (Lach Sambo, Yeom Khun and Sal Koem San), the Committee notes the Government's statement that officials from the Department of Labour Disputes failed to meet with any of those workers although several visits were made to the relevant factories. The Committee notes the Government's statement that it has tried to contact the representatives of the FTUWKC of those factories, in order to get the contact addresses of those workers, but that no response has been received. Recalling that the Committee has been raising the above matters since 2007, it expresses its concern over the lengthy delay and the lack of progress made in the investigation. The Committee must emphasize the importance of taking concrete and meaningful steps to investigate these matters without delay and urges the Government to keep it informed of the steps taken to resolve these long outstanding matters.

103. *The Committee must express its concern with continued delays and the lack of concrete results in this case. The Committee is bound once again to express the firm expectation that the Government will take swift action and will be able to report fully on the progress made by the Inter-Ministerial Commission concerning the reopened investigations into the murders of trade union leaders, as this shall have a significant impact on the impunity prevailing in the country and on the exercise of trade union rights of all workers. Lastly, the Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.*

The Committee's recommendations

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

(a) The Committee urges the competent authorities to take all necessary measures to expedite the process of investigation of the murders of Mr Chea Vichea, Mr Ros Sovannareth and Mr Hy Vuthy, including by ensuring the effective functioning of the Inter-Ministerial Commission for Special Investigations and the establishment and operation of its tripartite subcommission. It requests the Government to report on concrete progress in this regard and to provide information on the activities and progress of the Investigation Taskforce of the National Police Commissariat related to these heinous crimes. It further requests the Government to take any measures necessary to guarantee the safety Chea Vichea's brother and that of those who may be in a position to assist these investigations.

(b) The Committee expects that the Inter-Ministerial Commission for Special Investigations will thoroughly review and ensure an investigation into the allegations of torture and other ill-treatment by police of Mr Born Samnang and Mr Sok Sam Ouen, intimidation of witnesses and political interference with the judicial process and requests the Government to keep it informed of the outcome and any measure of redress provided for the wrongful imprisonment of those two men. It requests the Government to provide further information on the nature of their release from prison, indicating whether this release is temporary.

(c) Recalling that it had previously deplored the fact that Mr Thach Saveth was arrested and sentenced for the premeditated murder of trade unionist Mr Ros Sovannareth in a trial characterized by the absence of full guarantees of due process necessary to effectively combat impunity for violence against trade unionists, the Committee expects that the Inter-Ministerial Commission for

Special Investigations will thoroughly review the circumstances surrounding his trial so as to ensure that justice has been carried out and that he has been able to exercise his right to a full appeal before an impartial and independent judicial authority. It requests the Government to keep it informed of developments in this regard, including the outcome of the legal proceedings currently before the Court of Appeals and the outcome of the investigation by the Inter-Ministerial Commission for Special Investigations.

(d) The Committee once again urges the Government to keep it informed of any developments with respect to the murder of Mr Hy Vuthy, including the outcome of the legal proceedings of the Phnom Penh Municipal Court and the outcome of the work by the Inter-Ministerial Commission for Special Investigations. It also requests the Government to provide information as to why no reinvestigation of the case has been ordered.

(e) Recalling that it has been raising, since 2007, the alleged assault of 13 trade union activists of the FTUWKC and of the FTUSGF and the alleged dismissal of three trade union activists of the FTUWGGF, the Committee expresses its concern over the lengthy delay and the lack of progress made in the investigation into these matters. Emphasizing the importance of taking concrete and meaningful steps to investigate these matters without delay, the Committee urges the Government to keep it informed of the steps taken to resolve these long outstanding matters.

(f) The Committee must express its concern with continued delays and with the lack of concrete results in this case. The Committee is bound to once again express the firm expectation that the Government will take swift action and will be able to report fully on the progress made by the Inter-Ministerial Commission concerning the reopened investigations into the murders of trade union leaders, as this shall have a significant impact on the impunity prevailing in the country and on the exercise of trade union rights of all workers.

(g) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

CASE NO. 3121

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

Complaint against the Government of Cambodia presented by the Cambodian Alliance of Trade Unions (CATU)

Allegations: The complainant organization denounces the refusal to register a trade union at a garment factory; acts of anti–union discrimination following a strike, including dismissals, forced transfers, suppression of benefits and false criminal charges; the use of military force on striking workers; and alleges that section 269 of the Labour Act imposes excessive requirements for the determination and election of union leadership

105. The Committee last examined this case at its November 2016 meeting, when it presented an interim report to the Governing Body [see 380th Report, paras 118–142, approved by the Governing Body at its 328th Session].

106. The Government provided its observations in a communication dated 30 May 2017.

107. 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

108. At its November 2016 meeting, the Committee made the following recommendations [see 380th Report, para. 142]:

(a) The Committee requests the Government to take the necessary measures to ensure the swift registration of the factory trade union in line with the mentioned principles and to keep it informed of any developments in this regard. The Committee trusts that the Government will avoid creating additional administrative obstacles to registration and will ensure that legislative reform or the issuance of implementing regulations does not have the effect of suspending or considerably delaying registration of trade unions in the future.

(b) The Committee urges the Government, in consultation with all social partners concerned, to review section 269 of the Labour Act and section 20 of the new Act on Trade Unions and take all necessary steps to ensure that the law does not infringe workers' right to elect their officers freely, and to report back on any measures taken in this regard. The Committee urges the Government to take all necessary measures to ensure in the future that the notification requirement in section 3 of the Prakas No. 305 does not amount to a requirement for authorization by the employer to create a trade union or is not otherwise misused to halt trade union formation.

(c) Observing on the basis of the information provided by the Government that the new Act on Trade Unions and the Labour Act have different approaches to certain issues regarding freedom of association, the Committee requests the Government to provide information in this respect, including on the relationship between these laws, to the Committee of

Experts on the Application of Conventions and Recommendations, to which it refers the legislative aspects of this case.

(d) The Committee urges the Government to inform it without delay of any outcome of the investigations into the allegations of killings, physical injury and arrest of striking workers and of any measures taken as a result, particularly with regard to the three mentioned committees. The Committee requests the Government to promote in the future social dialogue and collective bargaining as preventive measures aimed at restoring confidence and peaceful industrial relations and trusts that the Government will ensure that the use of police and military force during strikes is strictly limited to situations where law and order are seriously threatened.

(e) In light of the circumstances of the case, as well as the alarming statistical information provided by the complainant, the Committee requests the Government to take the necessary measures to ensure that trade union members and leaders are not subjected to anti-union discrimination, including dismissal, transfers and other acts prejudicial to the workers, or to false criminal charges based on their trade union membership or activities, and that any complaints of anti-union discrimination are examined by prompt and impartial procedures.

(f) The Committee regrets that it had to examine this case without being able to take account of the observations of the enterprise concerned and requests the Government to obtain information from the enterprise on the questions under examination through the relevant employers' organization.

(g) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

B. The Government's reply

109. In its communication dated 30 May 2017, the Government indicates that it has never banned or delayed any trade union registration, that unions with properly completed and submitted applications containing all required documents are considered as having been registered and that, if there is a mistake in the application, the Registrar notifies the applicant of the need to make a rectification, which should not, however, be considered as a barrier for trade union registration. Furthermore, with the adoption of the 2016 Act on Trade Unions, the procedure for registration was reformed and simplified, in particular: (i) the registration period has been shortened from 60 to 30 days and a trade union will thus be considered as duly registered if the applicant does not receive any information from the Registrar within 30 days following the application; (ii) the Prakas No. 249 on Registration of Trade Unions and Employers' Associations, issued on 27 June 2016, provides the details of the procedure, as well as a list of required documents and templates; and (iii) the authority to register trade unions has been delegated from the Ministry of Labour and Vocational Training (MLVT) in Phnom Penh to every Provincial Department of Labour and Vocational Training, which aims at saving the time and expenses of the applicants. The Government adds that the new Act on Trade Unions is aimed at protecting the legal rights of all interested persons covered by the Labour Act, including personnel working in the air and maritime transportation, ensuring the right to collective bargaining, promoting harmonious labour relations and contributing to the development of decent work and enhancement of productivity and investment. In order to ensure proper understanding of the law, a number of training courses for employers and workers have been conducted by the MLVT in collaboration with trade unions and employers' associations.

110. With regard to the registration of the Cambodian Alliance of Trade Unions (CATU) at the Bowker Garment Factory (Cambodia) Co. Ltd., the Government informs that the application for registration was received on 10 March 2015 and the trade union was registered on 29 April 2015, within the time limit provided by law. Concerning the alleged termination of CATU leaders, the Government states that on 29 November 2016, the Labour Disputes Department of the MLVT held a meeting with the four workers concerned and the

employer's representatives in order to seek their explanation on the reasons for their termination and found out that although the workers had been terminated together with some other workers during a mass lay-off when the factory had less order, they had been reinstated with back-pay on 24 February 2014 and are currently working at the factory without any intimidation from the employer.

111. The Government reaffirms that the exercise of freedom of association in Cambodia is free and without any intimidation and that the MLVT has been working very closely with all the stakeholders to promote harmonious labour relations and decent work through various platforms. The Government, therefore, asked the Committee to withdraw this case from the list of pending cases.

C. The Committee's conclusions

112. *The Committee recalls that the complainant in this case denounces the refusal to register a trade union at a garment factory; acts of anti-union discrimination following a strike, including dismissals, forced transfers, suppression of benefits and false criminal charges; the use of military force on striking workers; and excessive requirements for the determination and election of union leadership.*

113. *With regard to the alleged obstacles to registration and the refusal to register a trade union at the factory level (recommendation (a)), the Committee notes the Government's indication that the application for registration of CATU at the garment factory was received in March 2015 and the trade union was successfully registered in April 2015 within the time limit prescribed by law. The Committee welcomes this development and requests the Government to confirm that the concerned workers were duly informed of the union's successful registration and that they can exercise legitimate union activities freely and without any interference. Further noting the Government's statement that, with the adoption of the Act on Trade Unions, 2016 and the Prakas No. 249 on Registration of Trade Unions and Employers' Associations, the registration procedure has been improved, simplified and made more accessible to the applicants, the Committee expects that this legislative reform will contribute to ensuring a simple, objective, transparent and rapid procedure for trade union registration in practice and will prevent the formulation of additional administrative obstacles. The Committee invites the Government to provide a copy of the Prakas No. 249 and refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

114. *In its previous examination of the case, having noted that both section 269 of the Labour Act and section 20 of the new Act on Trade Unions required potential candidates for trade union office, albeit in different wording, not to have been convicted of any crime, the Committee urged the Government to review these provisions and take the necessary measures to ensure that the law did not infringe workers' right to elect their officers freely (recommendation (b)). Regretting that the Government failed to provide any information on this matter, the Committee once again emphasizes that conviction on account of offences the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions should not constitute grounds for disqualification from holding trade union office, and any legislation providing for disqualification on the basis of any offence is incompatible with the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 422]. The Committee urges the Government once again to take the necessary measures to review the relevant provisions, in consultation with the social partners, in order to ensure that the law does not infringe workers' right to elect their officers freely. Furthermore, in the absence of any information from the Government in reply to its previous recommendation relating to the Prakas No. 305, the Committee once again requests it to take all necessary measures to ensure in the future that*

the notification requirement in section 3 does not amount to a requirement for authorization by the employer to create a trade union or is not otherwise misused to halt trade union formation. The Committee refers the legislative aspects of this case to the Committee of Experts.

115. *Regarding the alleged use of military force on striking workers in January 2014 (recommendation (d)), the Committee recalls that according to the complainant, five workers were shot and killed, 40 wounded and 23 arrested as a result of the military intervention and violence against striking workers is a widespread occurrence in the country. The Committee regrets that the Government does not provide any information in this regard and recalls that these allegations have been examined by both the Committee of Experts and the Conference Committee on the Application of Standards. In particular, in its latest observation, the Committee of Experts noted the Government's indication that the strike action had turned violent, that security forces had had to intervene in order to protect private and public properties and restore peace and that the three committees set up following the incidents had been transformed and assigned more specific roles and responsibilities: (i) the Damages Evaluation Commission concluded that the total amount of damages was not less than US$75 million including damages on public and private properties in Phnom Penh and some other provinces; (ii) the Veng Sreng Road Violence Fact-Finding Commission concluded that the incident was a riot instigated by some politicians by using the minimum wages standards as the propaganda, and did not fall under the definition of a strike action under international labour standards since demonstrators blocked public streets at midnight, hurled burning bottles of gasoline and rocks at the authorities and destroyed private and public properties; and (iii) the Minimum Wages for Workers in Apparel and Footwear Section Study Commission was transformed into the existing Labour Advisory Committee, which is tripartite and advises on promoting working conditions including minimum wage setting. The Committee of Experts also noted the ITUC allegations that the committees were not credible, an independent investigation into the events was still necessary and those responsible for the acts of violence – which led to the death of five protesters and the wrongful arrest of 23 workers – must be held accountable.*

116. *The Committee understands from the above information that, due to its violent character, the January 2014 demonstration has not been considered as a strike action by the fact-finding commission and that the ongoing investigations do not seem to address the specific allegations of killings, physical injury and arrest of protesting workers. In this regard, the Committee expresses concern at the acts of violence on both sides and recalls that while 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], freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed. In cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see* ***Digest****, op. cit., paras 43 and 49]. The Committee, therefore, urges the Government to clarify whether the specific allegations of killings, physical injury and arrest of protesting workers following the January 2014 demonstrations are being investigated in the context of the mentioned fact-finding committees and if so, to provide the specific findings of the committees in this regard. Should the ongoing investigations not cover this issue, the Committee urges the Government to institute an independent inquiry into the serious allegations without delay and to inform it of the outcome and the measures taken as a result.*

117. *As regards the Committee's recommendation that the Government take the necessary measures to ensure that trade union members and leaders were not subjected to anti-union discrimination, or to false criminal charges based on their trade union membership or*

activities, and that any complaints of anti-union discrimination were examined by prompt and impartial procedures (recommendation (e)), the Committee notes the Government's statement with respect to the alleged termination of CATU leaders that a meeting had been organized by the MLVT with the workers concerned and the employer's representatives, which confirmed that although the workers had been terminated during a mass lay-off, they had since been reinstated with back-pay and are currently working at the factory without any intimidation from the employer. The Committee observes that the Government does not however address the broader issue of the alleged widespread practice of anti-union discrimination, including dismissals and filing of false criminal charges, allegations which the Committee had noted during its last examination were corroborated with alarming statistical information. Recalling that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions [see ***Digest****, op. cit., para. 769], the Committee requests the Government to keep it informed of any specific measures taken or envisaged to address these allegations and, in particular, to ensure that trade union members and leaders are not subjected to anti-union discrimination, including dismissals, transfers and other acts prejudicial to the workers, or to false criminal charges based on their trade union membership or activities, and that any complaints of anti-union discrimination are examined by prompt and impartial procedures.*

The Committee's recommendations

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

(a) The Committee welcomes the registration of the factory trade union and requests the Government to confirm that the concerned workers were duly informed of the union's successful registration and that they can exercise legitimate union activities freely and without any interference. The Committee expects that the adoption of the new Act on Trade Unions, 2016 and the Prakas No. 249 on Registration of Trade Unions and Employers' Associations will contribute to ensuring a simple, objective, transparent and rapid procedure for trade union registration in practice and will prevent the formulation of additional administrative obstacles. The Committee invites the Government to provide a copy of the Prakas No. 249 and refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.

(b) The Committee urges the Government once again to take the necessary measures to review section 269 of the Labour Act and section 20 of the new Act on Trade Unions, in consultation with the social partners, in order to ensure that the law does not infringe workers' right to elect their officers freely. The Committee requests the Government once again to take all necessary measures to ensure in the future that the notification requirement in section 3 of the Prakas No. 305 does not amount to a requirement for authorization by the employer to create a trade union or is not otherwise misused to halt trade union formation. The Committee refers the legislative aspects of this case to the Committee of Experts.

(c) The Committee urges the Government to clarify whether the specific allegations of killings, physical injury and arrest of protesting workers following the January 2014 demonstrations are being investigated in the context of the mentioned fact-finding committees and if so, to provide the

specific findings of the committees in this regard. Should the ongoing investigations not cover this issue, the Committee urges the Government to institute an independent inquiry into the serious allegations without delay and to inform it of the outcome and the measures taken as a result.

(d) The Committee requests the Government to keep it informed of any specific measures taken or envisaged to address the allegations of widespread anti-union discrimination and, in particular, to ensure that trade union members and leaders are not subjected to anti-union discrimination, including dismissals, transfers and other acts prejudicial to the workers, or to false criminal charges based on their trade union membership or activities, and that any complaints of anti-union discrimination are examined by prompt and impartial procedures.

(e) The Committee once again draws the Governing Body's attention to the serious and urgent nature of certain aspects of this case.

CASE NO. 3212

INTERIM REPORT

Complaint against the Government of Cameroon presented by the Confederation of Independent Trade Unions of Cameroon (CSIC)

Allegations: Anti-union interference by a public service concession holder, withholding of check-off facilities, and lack of mechanisms to ensure the impartiality of workers' representative elections

119. The complaint is contained in a communication from the Confederation of Independent Trade Unions of Cameroon (CSIC) dated 5 April 2016.

120. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on two occasions. At its meeting in June 2017 [see 382nd Report, para. 8], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any information.

121. Cameroon 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

122. In its communication of 5 April 2016, the CSIC alleges that the National Electricity Company of Cameroon (ENEO) (hereinafter, the company) prevented the National Independent Electricity Trade Union (SNI-Energie) and the National Union of Electric

Energy (SNEE), which are both affiliated with the CSIC, from participating in workers' representative elections held in 2014 and 2016, thereby depriving staff of their right to vote, to stand for election and to be nominated as officials of their union.

123. The complainant organization underscores that the Minister of Labour and Social Security (MINTSS) also granted a derogation to allow the company to hold the elections on 14 April 2014 instead of 15 January 2014, the date originally fixed by the Minister for union elections in Cameroon, thereby reducing arbitrarily the term of office of staff representatives in the company. According to the complainant, the date of the 2014 elections in the company was further postponed by a week, this time without ministerial authorization. The complainant claims that, on this occasion, its representatives were prevented from entering the regional headquarters of the company by armed guards. The complainant also alleges that, at the same time, the company facilitated the participation of unions that it favoured, and that this reflects a desire to curtail the autonomy and independence of trade unions and their capacity to advocate on behalf of their members. In addition, the CSIC condemns the failure to publish a list of candidates, in violation of the provisions of MINTSS Order No. 116 of 1 October 2013, which establishes electoral procedures and the terms and conditions under which staff representatives discharge their duties. The CSIC also notes that the company benefited from a similar derogation during the 2016 trade union elections, and claims that the company's general manager arbitrarily disqualified SNI-Energie and the SNEE from taking part in those elections on the grounds that they had not signed a social dialogue charter.

124. The complainant also alleges that trade union dues are being unlawfully withheld by the company, in violation of the Labour Code, section 21(1) of which provides: "An employer shall be permitted to deduct from the wages earned by a worker under his control the ordinary trade union contribution due from the worker, provided that the employer immediately pays the contribution so deducted to the trade union specified by the worker." The complainant alleges that, following its attempt to establish a two-headed leadership structure in the SNEE, the company, as part of its resolute strategy to silence the union, decided to withhold union dues, thereby successfully bringing the SNEE activities to a halt. According to the CSIC, approximately 90 million Central African Francs (CFA) in union funds have been unlawfully withheld since 2012 and should be returned to the legitimate union leadership team, headed by Mr Fouman Julien Marcel Baby.

125. Finally, the CSIC claims that MINTSS Order No. 002 of 13 January 2016 neither provides for the deployment of trade union confederations within enterprises to conduct election campaigns, nor for measures to resolve pre- or post-electoral disputes. The provisions of the Labour Code are vague and fail to provide a deadline for the resolution of electoral disputes prior to the announcement of election results.

B. The Committee's conclusions

126. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has failed to reply to the complainant's allegations, despite the fact that it has been invited on two occasions, including by means of an urgent appeal, to present its comments and observations on this case. The Committee firmly urges the Government to be more cooperative in future.*

127. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1971)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information it had hoped to receive from the Government.*

128. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of*

freedom of association is to promote respect for this freedom in law and in practice. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].

129. *The Committee observes that, in this case, the complainant's allegations relate to anti-union interference by a public service concession holder (the company); the non-remittance of trade union dues deducted at source by that company; and the lack of mechanisms to ensure the impartiality of workers' representative elections.*

130. *As regards the allegations of interference by the company in the 2014 and 2016 staff representative elections, the Committee notes with concern that two unions affiliated with the CSIC, namely SNI-Energie and the SNEE, were unable to put forward candidates for those elections, while other unions would have enjoyed the employer's support; this undermines the integrity of the ballot, and distorts trade union representation within the enterprise, including by impeding the determination of union representativeness on the basis of those elections. The Committee notes that the non-participation of the two unions was due, in part, to the failure to provide notification of the various postponements of the 2014 and 2016 elections – postponements that, it is alleged, were authorized, with one exception, by the public authorities in an arbitrary manner, to the detriment of the trade unions concerned. The Committee also takes note of allegations that the director-general of the company deliberately excluded the two unions on the grounds that they had not signed a social dialogue charter and notes in particular that, on the day of the election in 2016, the leaders of SNI-Energie were prevented from entering the regional headquarters of the company. In the absence of any information provided by the Government, the Committee wishes to stress that 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 of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 389]. The Committee also wishes to recall that both the government authorities and employers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities [see **Digest**, op. cit., para. 343]. Furthermore, for the right to organize to be meaningful, the relevant 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 [see **Digest**, op. cit., para. 1106]. In light of these principles, the Committee requests the Government to ensure that neither the company's management nor the public authorities intervene in union elections and prevent certain professional trade unions from being excluded while other workers' organizations receive favourable treatment.*

131. *In considering the allegations regarding the non-remittance of trade union dues, the Committee notes with concern that, according to the allegations made, the union dues of workers affiliated to the SNEE were not transferred to the union. The Committee requests the Government to provide information on the current status of the SNEE, and, in particular, to indicate whether the matter of the deduction of the union members' contributions has been resolved with the company and whether the SNEE is able to conduct its activities without interference. If not, the Committee urges the Government to take the necessary measures vis-à-vis the company to remedy the situation without delay.*

132. *As for the issue of challenges to the staff representative election results, the Committee notes that, according to the CSIC, there is a lack of effective mechanisms to ensure the impartiality of staff representative elections and inadequate legislation with respect to challenging election results. As it has received no information on this point, and in view of the absence of any reply from the Government, the Committee can only recall that in cases where the*

*results of trade union elections are challenged, such questions should be referred to the judicial authorities in order to guarantee an impartial, objective and expeditious procedure [see **Digest**, op. cit., para. 442]. The Committee observes that, in this case, and according to the information at its disposal, the CSIC did not challenge the results of the trade union elections before the courts. The Committee requests the Government to provide information on the procedures available for resolution of electoral disputes.*

133. *The Committee regrets not having been able to examine information from the enterprise on account of the absence of a reply from the Government. It requests the Government to solicit information from the employers' organizations concerned, so as to have at its disposal their version of events as well as the views of the enterprise on the pending issues.*

The Committee's recommendations

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

(a) The Committee regrets that the Government has failed to reply to the allegations, despite the fact that it has been invited to do so on several occasions, including by means of an urgent appeal, and urges it to reply promptly.

(b) The Committee requests the Government to ensure that neither the company's management nor the public authorities intervene in union elections and prevent certain professional trade unions from being excluded while other workers' organizations receive favourable treatment.

(c) The Committee requests the Government to provide information on the current status of the SNEE, and, in particular, to indicate whether the matter of the deduction of its members' contributions has been resolved with the company and whether the union is able to conduct its activities without interference. If not, the Committee urges the Government to take the necessary measures vis-à-vis the company to remedy the situation without delay.

(d) The Committee requests the Government to provide information on all the procedures available for resolution of electoral disputes.

(e) The Committee requests the Government to solicit information from the employers' organizations concerned, so as to have at its disposal their version of events as well as the views of the enterprise concerned on the pending issues.

CASE NO. 3184

INTERIM REPORT

Complaint against the Government of China presented by the International Trade Union Confederation (ITUC)

Allegations: Arrest and detention of eight advisers and paralegals who have provided support services to workers and their organizations in handling individual and/or collective labour disputes, as well as police interference in industrial labour disputes

135. The Committee last examined this case at its October 2016 meeting [see 380th Report, paras 193–243].

136. The Government sent its observations in communications dated 3 March and 2 October 2017.

137. The International Trade Union Confederation (ITUC) sent additional information in a communication dated 12 May 2017.

138. China 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

139. At its October 2016 meeting, the Committee made the following recommendations in relation to this case [see 380th Report, para. 243]:

(a) The Committee requests the Government to provide the court judgments in cases of Mr Zeng Feyiang, Ms Zhu Xiaomei and Mr Tang Huanxing and to ensure that the three activists can continue providing advisory services to workers without hindrance.

(b) The Committee expects that the pending investigation of Mr Deng Xiaoming and Mr Peng Jiayong will be concluded without further delay and that it will also shed light on the alleged attack on Mr Zeng on 20 December 2014 and the beating and detention of several workers of the Lide Shoes Factory and of Mr Meng in April 2015. The Committee requests the Government to keep it informed in this respect and to provide the court judgments in cases of Mr Meng Han, Mr Deng Xiaoming and Mr Peng Jiayong, once they have been handed down.

(c) The Committee requests the Government to indicate whether Mr Chen has been charged, as other labour advisers, with "gathering a crowd to disturb social order", as claimed by the complainant, and if so, to provide detailed information regarding his case.

(d) The Committee expects that an independent inquiry will be conducted by the Government into the allegation of the police intervention in the labour dispute at the Cuiheng Bag Factory in March–April 2015 which led to the detention of four factory workers and injuries of many, including Mr Peng Jiayong, volunteer of Haige Labour Services Centre, Mr Chen and Zhu Xinhua, a workers' representative from another factory. It requests the Government to provide detailed information on its outcome.

(e) The Committee requests the Government to provide its observations on the allegations of pressure suffered by the relatives of Mr Zeng and Mr Meng.

B. The complainant's observations

140. By its communication dated 12 May 2017, the ITUC rebuts the Government's previous observations and provides an update on the trial of the four labour activists, namely Mr Zeng Feiyang, Ms Zhu Xiaomei, Mr Tang Huanxing and Mr Meng Han.

141. With reference to the Government's previous indication that the registration of the Panyu Workers' Document-Processing Service Centre was revoked in 2007, and that the Centre has not been registered, the ITUC indicates that it was the Migrant Workers' Cultural Service Centre in Shiqi that had its registration revoked in 2007, not the Panyu Workers' Centre. According to the complainant, the Panyu Workers' Centre made repeated unsuccessful registration attempts and was told by the authorities that there were no guidelines on the registration of NGOs defending labour rights. The complainant recalls that the Panyu Workers' Centre has openly served workers in Guangzhou for 17 years and was well known in the community and to the local government. The ITUC considers that the prosecution of the leaders of the Centre was directly related to the technical support they provided to workers, including those who were on strike.

142. With regard to the Government's claim that Mr Zeng, Mr Meng, Mr Tang, Ms Zhu Xiaomei, Mr Peng and Mr Deng engaged in work stoppages at Lide Shoes Factory (hereinafter the shoe factory) leading to the mass gathering of people and eventually disruption of public order three times during the period from December 2014 to April 2015, the ITUC argues that the work stoppages where held in and around the shoe factory premises and were completely peaceful and there is no evidence that the public order was disturbed by the strikes. It further indicates that while it is true that over the course of the three strikes, on some occasions, some workers remained at the premises overnight and blocked products from being transported out of the factory, the workers did not threaten or verbally abuse any workers who chose to go to work. According to the ITUC, if the peace was in fact disturbed, it was when the police stormed the factory, beat several workers and dragged away their leaders.

143. With respect to the Government's assertion that Mr Zeng and another six persons were punished for engaging in gathering people to disturb public order and other criminal activities causing damage to the interests of other citizens, the complainant affirms that the legitimate purpose of lawful strikes and demonstrations is to firmly but peacefully halt production and to encourage others not to work and that the Government recast the legitimate exercise of freedom of association rights as a criminal charge. The complainant further considers that the detention of persons for reasons connected with those activities constitutes a serious interference with trade union rights, no matter how the acts are characterized. It further argues that the public security authority violated section 14 of the Criminal Procedure Law when it barred lawyers from visiting the detained individuals.

144. The ITUC further indicates that contrary to the Government's assertion that freedom of association is fully safeguarded in China, its laws and regulations do not allow workers to join or form trade unions unless the local unions have affiliated with the All-China Federation of Trade Unions (ACFTU). It also affirms that the Government has frequently used public order laws to crack down on legal activists and trade unionists and points out that it is not possible for a worker to participate in a legitimate strike or demonstration without violating Chinese law that prohibits the disturbance of public order. Moreover, the ITUC alleges that in China, it is common for the prosecutor and the court to view industrial actions taken by workers as public security violations rather than as the exercise of fundamental rights.

145. Regarding the accusations laid out against Mr Zeng for having organized people to block the gate of the company, stop the circulation of vehicles through the gate, cause troubles in the workshops and offices, obstruct the normal work of others and seriously disturb the normal

production order of the company, the complainant argues that contrary to the Government's accusations, Mr Zeng was a consultant who facilitated collective bargaining, provided workers with legal assistance, helped to organize meetings and taught workers to seek legitimate demands and to defend their rights in a legal way.

146. Regarding the rights of the defendants (Mr Zeng, Mr Tang and Ms Zhu) while in custody, the ITUC alleges that although the defendants pleaded guilty and accepted the sentences, these guilty pleas were made under duress to avoid further prosecution by the authorities. Furthermore, the defendants underwent harsh treatment while in detention and extremely harsh treatment in jail by the authorities. According to the ITUC, Mr Zeng was interrogated 65 times for approximately three hours each session. During his first three days of detention Mr Meng was interrogated every day and only had around three hours of sleep per day; when transferred to another detention centre in Guangzhou, he was interrogated for 13 days straight and allowed to sleep for only around two hours a day; afterwards, Mr Meng was still questioned around once a day. According to the complainant, in the course of the interrogations, the police told Mr Meng that if he implicated Mr Zeng, he would be granted leniency in his case.

147. The ITUC further refers to the publicly available video footage which shows that on 5 May 2016, the apartment of Mr Meng's parents was vandalized by three masked men who brandished an axe and attempted to break into the apartment. According to the complainant, the vandalization of the apartment was very likely a retribution for Mr Meng's support for workers' rights.

148. The ITUC recalls that Mr Zeng, Ms Zhu, Mr Tang and Mr Meng were prosecuted for their involvement in three strikes at the shoe factory. On 29 September 2016, Mr Zeng was found guilty of violating section 290 of the Criminal Code and sentenced to three years of imprisonment, suspended for four years; Mr Tang and Ms Zhu were sentenced to one-and-a-half years of imprisonment, suspended for two years; all three were released on the same day. Mr Meng, accused of organizing workers' representatives to instigate the second strike in the shoe factory on 15 December 2014, during which workers blocked the company entrance and leading a sit-in on 20 April 2015, was tried on 3 November 2016. He was sentenced to one year and nine months of imprisonment. Previously, in April 2014, he was sentenced to nine months of imprisonment under section 240 of the Criminal Code for having staged a protest of security guards at the Guangzhou Municipal Chinese Medical Hospital to demand compensation for the termination of their contracts by the employment agency. According to the complainant, the judgments in the above cases indicate that the four activists trained workers of the factory, facilitated workers to elect their collective bargaining representatives and instigated workers to stage three strikes between 2014 and 2015. Mr Zeng, as the Director of the Panyu Centre, was found by the court to be "fully in charge" of the three strikes. Mr Meng was found responsible for implementing the strike plan, convening meetings, giving instructions to workers during the strikes and making online updates. Mr Tang was accused of handling the media and Ms Zhu of liaising with workers and their representatives. The judges determined that the actions of the four led to a serious economic loss of RMB2.7 million (approximately US$400,000) and had disrupted public order.

149. According to the complainant, none of the evidence proffered by prosecution, including pictures, video clips of the three strikes, tweeted messages, correspondence and meeting documents, support a finding of disruption of public order. The prosecution called 26 witnesses, including four from the management, six from the local government and ten factory workers. None of them provided evidence indicating that the strikes became violent or unruly; rather, they all pointed out that the workers' actions were confined to the company complex. Some witnesses said that the strikes were "escalating in scale and emotional intensity on the part of the strikers", referring to workers chanting slogans in a louder voice in the third strike and staging a demonstration at the company offices. Thus, according to

the ITUC, the testimony could only support the finding of a work stoppage that brought production to a halt, some shouting aimed at office employees, the sit-in in front of the company entrance and stopping vehicles from leaving the factory. However, while the strikes were animated, there is no evidence that the strikes were violent, disturbed the public order or were otherwise about to spiral out of control. Regarding the Committee's request to ensure that the three sentenced activists, namely Mr Zeng, Mr Tang and Ms Zhu, could continue providing labour services to workers without hindrance, the ITUC indicates that none of the six labour activists have been able to resume their previous roles and provide labour services: Mr Tang, Mr Peng and Mr Deng ceased working as labour activists and have left Guangdong Province; Ms Zhu and Mr Zeng have to wear GPS devices so as to ensure that the authorities can keep track of their movements and the contacts they make; Mr Meng is still serving his sentence and Mr Chen has not yet been prosecuted.

C. The Government's reply

150. By its communications dated 3 March and 2 October 2017, the Government indicates that it had duly investigated the allegations raised in this case. The Government recalls that Mr Deng and Mr Peng were accused of gathering people to disrupt public order and put under criminal detention by the Panyu Branch of the Guangzhou Public Security Bureau. On 8 January 2016, they were released on bail and sent back to their original places of residence – Leiyang, Hunan Province, and Yichang, Hubei Province, respectively. On 3 January 2017, the Panyu Branch of the Guangzhou Public Security Bureau terminated their bails pursuant to the legislation in force. Mr Deng and Mr Peng left Guangzhou on 5 and 11 January 2017, respectively. Mr Deng is self-employed and Mr Peng now works for another company.

151. The Government informs that on 3 November 2016, the Second Criminal Tribunal of Guangzhou Fanyu District Court heard the case of Mr Meng, accused of gathering people to disrupt public order. The Court held that the facts in this case were clear and corroborated. Mr Meng was sentenced to imprisonment for one year and nine months. According to the Government, he had accepted the judgment and will not appeal it. On 3 September 2017, Mr Meng, having completed his prison sentence, was released.

152. The Government further indicates that during the court hearing, the public prosecutor presented evidence, including videos records, showing that Mr Zeng has organised, led and actively participated in the collective stoppage. The testimonies of several witnesses demonstrated that, during the stoppage, workers collectively insulted and attacked other persons who came in and out of the office, and disturbed employees who were working in the office. The court opined that the shoe factory suffered a loss of production value amounting to approximately RMB2,7 million (approximately 400,000 USD) and a loss of brut profit amounting to RMB933041.2 (approximately 140,000 USD). The court concluded that the workers' actions during the stoppage seriously disturbed the normal work of others, the production order of the company and led to serious economic loss to the company. Pursuant to section 290(1) of the Penal Code, Mr Zeng and others are criminally liable for having disturbed the normal production order of the company which led to serious economic loss. Mr Zeng, Mr Tang and Ms Zhu are currently on probation and thus have to do community service on a regular basis.

153. The Government indicates that it has forwarded a copy of the court verdicts in the cases of Mr Zeng, Mr Tang, Mr Meng and Ms Zhu (not attached). As to the question of whether Mr Zeng and others could continue providing advisory services, the Government indicates that any such activity would be subject to its conformity to the national laws and regulations.

154. The Government reiterates that there is no evidence of Mr Chen's involvement in the crime of gathering people to disrupt public order and, thus, no compulsory measures have been imposed on him.

155. According to the Government, an investigation into the case of the Cuiheng Bag Factory (hereinafter the bag factory) labour dispute revealed that, on 2 March 2015, workers in the factory in Nanlang village (Zhongshan, Guangdong Province) demanded that the original salary scales be maintained or buyouts be offered due to the reduced normal and extra working time caused by the decrease in orders. Some of the workers engaged in the work stoppage obstructed those not participating in the action from working. Four leaders were accused of disrupting production order and were thus put under administrative detention on 24 March 2015 by the Nanlang Branch of the Zhongshan Public Security Bureau. Thereafter, production order in the bag factory was restored.

156. Furthermore, an investigation into the allegation that Mr Peng and others were subjected to assaults revealed that on 2 April 2015, around 7 p.m., Mr Peng resisted being questioned by the Nanlang Branch of the Zhongshan Public Security Bureau. He was then summoned to the local police station for inquiry and re-education. On 3 April 2015, Mr Peng reported to the police that he was kidnapped and assaulted by seven to eight unknown persons after leaving the police station but was not able to provide any evidence. After reviewing the video record, no relevant evidence was found. Upon a preliminary medical examination he reported minor skin abrasions.

157. The Government further indicates that there are no police records pertaining to the alleged intimidation of relatives of Mr Zeng. As concerns similar allegations involving Mr Meng, the Government indicates that in mid-September 2015 Mr Meng rented a residence in Nantou village, Zhongshan, Guangdong Province, together with his partner on a two-year lease. On 3 December 2015, when Mr Meng had been placed under criminal detention, the landlord requested to terminate the lease, given Mr Meng's involvement in illegal activities. However, his partner refused to move out and put forward various unreasonable demands. She had Mr Meng's parents move in to live with her. On 7 May 2016, Mr Meng's father reported to the local police station that an unknown person chopped down the door of their rented residence by using an axe. The case was accepted and is currently under investigation.

158. Referring to its Constitution and legislation, the Government reaffirms that it protects the freedom of association rights of its citizens. It points out, however, that as in other countries, when exercising these rights, workers and their organizations shall abide by the national legislation and shall not undermine the normal public order, or damage the interests of other citizens. None of the persons involved in this case was punished for establishing workers' organizations or participating in workers' activities; rather, they were punished for using illegal measures to resolve labour disputes. The Government emphasizes that in dealing with these cases, Chinese judicial and public security authorities followed the existing procedures; the rights of the relevant persons were well safeguarded.

D. The Committee's conclusions

159. *The Committee recalls that this case concerns allegations of arrest and detention, on charges of "gathering a crowd to disturb public order", of seven advisers and paralegals (Mr He Xiaobo, Mr Zeng Feyiang, Mr Meng Han, Ms Zhu Xiaomei, Mr Deng Xiaoming, Mr Peng Jiayong and Mr Tang Huanxing) who have provided support services to workers and their organizations in handling individual and/or collective labour disputes.*

160. *It recalls, in particular, that it expressed its concern over the heavy sentences, albeit suspended, imposed on Mr Zeng (three years), Ms Zhu (18 months) and Mr Tang (18 months), and requested the Government to provide a copy of the court judgments. It further requested the Government to ensure that the three activists could continue providing advisory services to workers without hindrance. The Committee also expected that the pending investigation of Mr Deng Xiaoming and Mr Peng Jiayong will be concluded without further delay and that it will also shed light on the alleged attack on Mr Zeng on*

20 December 2014 and the beating and detention of several workers of the shoe factory and of Mr Meng in April 2015. It requested the Government to keep it informed in this respect and to provide the court judgments in cases of Mr Meng Han, Mr Deng Xiaoming and Mr Peng Jiayong, once they have been handed down.

161. *The Committee notes the Government's indication that copies of the court judgments in the cases of Mr Zeng, Mr Tang, Mr Meng and Ms Zhu have been forwarded to the Office. The Committee regrets, however, that these have not yet been received. The Committee further notes the Government's indication that on 3 November 2016, the Second Criminal Tribunal of Guangzhou Fanyu District Court heard the case of Mr Meng, accused of gathering people to disrupt public order, and held that the facts in this case were clear and corroborated. Mr Meng was sentenced to imprisonment for one year and nine months. According to the Government, he had accepted the judgment and will not appeal it. The Committee notes that on 3 September 2017 Mr Meng was released from prison after the completion of his sentence.*

162. *The Committee notes with concern that according to the complainant, the judgments in the cases of Ms Zhu, Mr Zeng, Mr Tang and Mr Meng actually refer to the four activists having trained workers of the factory, facilitated workers to elect their collective bargaining representatives and instigated workers to stage three strikes between 2014 and 2015. Mr Zeng, as the Director of the Panyu Centre, was found by the court to be "fully in charge" of the three strikes. Mr Meng was found responsible for implementing the strike plan, convening meetings, giving instructions to workers during the strikes and making online updates. Mr Tang was accused of handling the media and Ms Zhu of liaising with workers and their representatives. According to the complainant and as indicated by the Government, the judges determined that the actions of the four led to a serious economic loss of RMB2.7 million (approximately $400,000) and had disrupted public order. The complainant further alleges that none of the evidence proffered by prosecution, including pictures, video clips of the three strikes, tweeted messages, correspondence and meeting documents, support a finding of disruption of public order. The prosecution called 26 witnesses, including four from the management, six from the local government and ten factory workers. According to the ITUC, none of them provided evidence indicating that the strikes became violent or unruly; rather, they all pointed out that the workers' actions were confined to the company complex. The ITUC states that some witnesses said that the strikes were "escalating in scale and emotional intensity on the part of the strikers", referring to workers chanting slogans in a louder voice in the third strike and staging a demonstration at the company offices. Thus, according to the ITUC, the testimony could only support the finding of a work stoppage that brought production to a halt, some shouting aimed at office employees, the sit-in in front of the company entrance and stopping vehicles from leaving the factory. However, the complainant concludes, while the strikes were animated, there is no evidence that the strikes were violent, disturbed the public order or were otherwise about to spiral out of control. The Committee notes that the Government states that it has been proven that Mr Meng led and actively participated in the collective stoppage and testimony demonstrated that, during the stoppage, workers collectively insulted and attacked other persons who came in and out of the office, and disturbed employees who were working in the office. The Government adds that the court opined that the shoe factory suffered an important loss of production value. It further notes the Government's indication that Mr Zeng, Mr Tang and Ms Zhu are currently on probation and thus have to do community service on a regular basis.*

163. *The Committee considers that the complainant's allegations would seem to indicate that the four activists were indeed indicted for having exercised genuine workers' representative activities. It further recalls that taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. Given the serious nature of the allegations, to allow it to undertake an objective examination, the Committee urges the Government to transmit a copy of the judgments in the abovementioned*

cases which were not attached as had been indicated. While noting that the Government generally states that the police and the courts deal with cases before them in accordance with the national legislation and that the rights of the accused and their lawyers were guaranteed, the Committee requests the Government to provide detailed information on the alleged harsh treatment of the labour activists while in custody, and in particular, the alleged numerous interrogations and their severe nature to which the accused were subjected. In this respect, the Committee considers that detained trade unionists, like all other persons, should enjoy the guarantees enunciated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. The detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 54 and 64].*

164. *The Committee notes the Government's indication that the above advisers can continue providing advisory services, subject to conformity to the national laws and regulations. It notes, however, with concern that the complainant to the contrary indicates that none of the labour activists have been able to resume their previous roles and provide labour services: Mr Tang, Mr Deng and Mr Peng ceased working as labour activists and have left Guangdong Province; Ms Zhu and Mr Zeng have to wear GPS devices so as to ensure that the authorities can keep track of their movements and the contacts they make; Mr Chen has not yet been prosecuted; and, at the time of the complainant's communication, Mr Meng was still serving his sentence. The Committee further observes with concern the complainant's reference to the national laws and regulations which do not allow workers to join or form trade unions unless the local unions have affiliated with the ACFTU and its allegations that the Government has frequently used public order laws to crack down on legal activists and trade unionists; that it is not possible for a worker to participate in a legitimate strike or demonstration without violating Chinese law that prohibits the disturbance of public order; and that it is common for the prosecutor and the court to view industrial actions taken by workers as public security violations rather than as the exercise of fundamental rights. Given the serious nature of these allegations, the Committee urges the Government to provide detailed observations thereon.*

165. *The Committee further recalls that Mr Deng and Mr Peng were released on bail for up to 12 months, pending investigation. The Committee notes the Government's indication that their respective bails were terminated on 3 January 2017 and that the activists left Guangzhou (where they were first detained) on 5 and 11 January 2017, respectively. The Committee notes the Government's indication that Mr Deng is self-employed and Mr Peng works for another company and understands this to mean that they are no longer under investigation and will not be prosecuted. The Committee requests the Government to confirm that this is the case.*

166. *The Committee notes that according to the Government, there is no evidence of Mr Chen's involvement in the crime of gathering people to disrupt public order and thus, no compulsory measures have been imposed on him.*

167. *The Committee regrets that no information has been provided by the Government regarding the alleged beating of several workers of the shoe factory and requests the Government to conduct an independent inquiry into this allegation and to provide detailed information on the outcome without delay.*

168. *Regarding the allegation of police intervention in the labour dispute at the bag factory in March–April 2015, which led to the detention of four factory workers and the injury of many, including Mr Peng Jiayong, Mr Chen and Zhu Xinhua, a workers' representative from*

another factory, the Committee notes the Government's indication that an investigation into the events which occurred during the labour dispute at the factory revealed that, on 2 March 2015, workers demanded that their original salary scales be maintained or buyouts be offered due to the reduced normal and extra working time caused by the decrease in orders; that some workers engaged in the work stoppage obstructed those not participating in the action from working; that four leaders were accused of disrupting production order and were thus put under administrative detention on 24 March 2015; and that thereafter, production order in the factory was restored. The Committee further notes the Government's indication that an investigation into the allegations of assaults on Mr Peng and others revealed that on 2 April 2015, around 7 p.m., Mr Peng resisted being questioned by the Nanlang Branch of Zhongshan Public Security Bureau. He was then summoned to the local police station for inquiry and re-education. On 3 April 2015, Mr Peng reported to the police that he was kidnapped and assaulted by seven to eight unknown persons after leaving the police station but was not able to provide any evidence. After reviewing the video record, no relevant evidence was found. Upon a preliminary medical examination, he reported minor skin abrasions. Recalling that according to the complainant in this case, Mr Chen and Zhu Xinhua have also suffered injuries, the Committee requests the Government to provide detailed information on the outcome of the investigation in relation to these two individuals.

169. *Regarding the allegations of pressure suffered by the relatives of Mr Zeng and Mr Meng, the Committee notes the Government's indication there are no police records pertaining to the alleged intimidation of relatives of Mr Zeng. As concerns similar allegations involving Mr Meng, the Government indicates that in mid-September 2015, Mr Meng rented a residence together with his partner on a two-year lease. On 3 December 2015, when Mr Meng had been placed under criminal detention, the landlord requested to terminate the lease, given Mr Meng's involvement in illegal activities. Mr Meng's partner, however, refused to move out and put forward various unreasonable demands. She had Mr Meng's parents move in to live with her. On 7 May 2016, Mr Meng's father reported to the local police station that an unknown person chopped down the door of their rented residence by using an axe and the case is currently under investigation. The Committee notes the information provided by the complainant and, in particular, a publically available video of the attack. The Committee requests the Government to keep it informed of the outcome and, in particular, to indicate whether any link is established with Mr Meng and his allegations of detention due to his engagement in workers' rights advocacy activities.*

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 urges the Government to transmit a copy of the court judgments in the cases of Mr Zeng Feyiang, Ms Zhu Xiaomei, Mr Tang Huanxing and Mr Meng Han without delay. It further requests the Government to provide detailed information on the alleged harsh treatment of the labour activists while in custody, and, in particular, alleged numerous interrogations underwent by the accused.

(b) The Committee requests the Government to provide detailed information on the alleged obstacles to the exercise of freedom of association in the country, in particular, the prohibition to join or form trade unions outside the ACFTU structure; the use by the Government of public order laws to crack down on activists and trade unionists, and the impossibility for a worker to participate in a legitimate strike or demonstration without violating Chinese law that prohibits the disturbance of public order.

(c) The Committee requests the Government to confirm that Mr Deng and Mr Peng are no longer under investigation and will not be prosecuted.

(d) Regretting that no information has been provided regarding the alleged beating and injuries suffered by workers and their representatives at the shoe factory, as well as Mr Chen and Zhu Xinhua (labour dispute at the bag factory), the Committee requests the Government to provide detailed information on the outcome of the relevant investigations.

(e) The Committee requests the Government to keep it informed of the outcome of the investigation into the alleged incident involving Mr Meng's father and, in particular, to indicate whether any link is established with Mr Meng and his allegations of detention due to his engagement in workers' rights advocacy activities.

CASES NOS 2761 AND 3074

INTERIM REPORT

Complaints against the Government of Colombia presented by
- **the International Trade Union Confederation (ITUC)**
- **the World Federation of Trade Unions (WFTU)**
- **the Single Confederation of Workers of Colombia (CUT)**
- **the General Confederation of Labour (CGT)**
- **the National Union of Food Industry Workers (SINALTRAINAL)**
- **the Union of Energy Workers of Colombia (SINTRAELECOL)**
- **the Cali Municipal Enterprises Union (SINTRAEMCALI) and**
- **the Single Trade Union Association of Public Employees of the Colombian Prison System (UTP)**

Allegations: The complainant organizations allege acts of violence (murders, attempted murders and death threats) against trade union leaders and members

171. The Committee has examined the substance of Case No. 2761 on three occasions [see 363rd, 367th and 380th Reports], the last of which was at its October 2016 meeting, when it examined Case No. 2761 together with Case No. 3074 and submitted an interim report on both cases to the Governing Body [see 380th Report, paras 244–274, approved by the Governing Body at its 328th meeting].

172. The General Confederation of Labour (CGT) and the Single Trade Union Association of Public Employees of the Colombian Prison System (UTP) presented new allegations in a communication dated 7 June 2017.

173. The Government sent its observations in a communication received on 9 June and 24 October 2017.

174. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention,

1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

175. At its October 2016 meeting, the Committee made the following interim recommendations concerning the allegations presented by the complainant organizations [see 380th Report, para. 274]:

(a) The Committee urges the Government to continue taking all the measures necessary to ensure that all of the acts of anti-union violence reported in this case are resolved and that the perpetrators and instigators are brought to justice.

(b) The Committee requests the Government to facilitate an inter-institutional evaluation of the investigation strategies used by the public authorities in the cases of violence against trade union officials and trade unionists. The Committee requests the Government to keep it informed of the outcome.

(c) The Committee requests the Government to provide information on the concrete functioning of the tripartite mechanism established in 2012 to collaborate with the investigations into the acts of violence against trade unionists.

(d) The Committee requests the Government to provide further information on the types of anti-union offences, not evident in this case, that have led to recent convictions.

(e) The Committee requests the Government to communicate promptly its observations on the allegations presented by SINTRAELECOL and to ensure that the situation of Mr Oscar Lema has been duly assessed in order to provide him with any protective measures he might require.

(f) The Committee requests the Government to ensure that an inquiry is initiated by the competent authorities into the arson of the vehicle of Mr José Ernesto Reyes, and to keep it informed of the outcome of that inquiry and the investigations conducted by the Public Prosecutor's Office in relation to the arson attacks on the headquarters of SINTRAEMCALI.

(g) The Committee invites the Government to maintain its efforts to ensure the safety of trade union leaders and trade unionists in the country and to continue to keep it informed in this regard.

(h) The Committee draws the particular attention of the Governing Body to the extreme seriousness and urgency of this case.

B. New allegations

176. In a communication dated 7 June 2017, the CGT and UTP allege that 21 UTP members, including three union leaders, were murdered between 5 June 2012 and 24 October 2016 (see first list below). The complainant organizations provide further details on 19 of the 21 murders, alleging that: (i) with regard to 12 of the murders, they have no official information on the status of the investigations; (ii) the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) were involved in four of the murders; (iii) a recording implicates the person presumably responsible for the murder of Mr Libardo Rivera Rodríguez, who was murdered for reporting cases of corruption inside a prison; and (iv) two persons suspected of murdering Mr Daniel Mancera Bernal have been captured. The complainant organizations also allege that another UTP officer, Mr Juan Garaviz Rincón, was seriously injured on 18 June 2015, supposedly by the FARC-EP. The complainant organizations further allege that 31 UTP leaders are currently facing death threats and that a criminal complaint has been filed in every case (see second list below).

List of murders and attempted murders reported by the CGT and UTP

No.	Date	Place	Name of victim	Position in UTP	Violent act
1	02/06/2016	Buga, Valle del Cauca	Giuliano Pieruccini Rodríguez	General secretary, UTP, Buga Valle del Cauca	Murder
2	09/01/2016	Medellín, El Pedregal	Álvaro Javier Benavides Rivera	Member, UTP	Murder
3	19/02/2015	Caicedonia, Valle del Cauca	Juan Esteban Preciado Valencia	Member, UTP	Murder
4	08/04/2015	Cúcuta, Norte de Santander	Edward Alexis Granados Flores	Branch officer, UTP	Murder
5	06/2015	Cali, Valle del Cauca	Wilmer Vidal Angulo	–	Murder
6	16/06/2015	Cali, Valle del Cauca	Julián Alberto Tocuma	–	Murder
7	06/02/2013	Arauca	Edilberto Rangel Zambrano	Member, UTP	Murder
8	30/05/2015	La Unión, Nariño	Libardo Rivera Rodríguez *	Member, UTP	Murder
9	24/10/2016	Granada, Meta	Julio Maestre	Member, UTP	Murder
10	–	–	Manuel Alfonso	–	Murder
11	25/05/2017	Ibagué, Tolima	César Leguizamón	–	Murder
12	05/06/2012	Cali, Valle del Cauca (near his place of work)	Horacio Madachi de Ávila	Human rights secretary, UTP (Villa Hermosa prison)	Murder
13	08/02/2013	Sincelejo, Sucre	Néstor Manuel Hinestrosa Mendoza	Member, UTP	Murder
14	16/04/2013	Barranquilla, Atlántico (El Bosque penitentiary)	Daniel Mancera Bernal	Member, UTP	Murder
15	04/06/2013	San Vicente del Caguán, Caquetá	Esneider Rubio Herrera	Member, UTP	Murder
16	04/06/2013	San Vicente del Caguán, Caquetá	Didier Martínez Mejía	Member, UTP	Murder
17	04/06/2013	San Vicente del Caguán, Caquetá	Diego Rodríguez González	Member, UTP	Murder
18	04/06/2015	San Vicente del Caguán, Caquetá	Dini Cisei Paredes	Member, UTP	Murder
19	04/06/2015	San Vicente del Caguán, Caquetá	Juan Garaviz Rincón	Officer, UTP	Person seriously injured
20	18/06/2015	Espinal, Tolima	Wilson Javier Solórzano Arenas	Member, UTP	Murder
21	15/10/2016	Cali, Valle del Cauca	Michel Steven Jiménez Velásquez	Member, UTP	Murder
22	24/10/2016	Granada, Meta	Edgar Velásquez Vélez	Member, UTP	Murder

* El Buen Pastor women's prison, Bogotá.

List of UTP union leaders allegedly facing death threats

No.	Violent act: death and physical threats	Name of threatened trade union leader	Place of work
1	Death threat	Horacio Bustamante Reyes	Manizales
2	Death threat	María Elsa Páez García	R. M., Bogotá
3	Death threat	Óscar Robayo Rodríguez	Modelo, Bogotá
4	Death threat	Christian E. López Mora	Modelo, Bogotá
5	Death threat	Adelina Vásquez	Jamundí
6	Death threat	Alejandro Durán García	Coiba
7	Death threat	Luis Alberto Pinzón Zamora	Bello, Antioquia

No.	Violent act: death and physical threats	Name of threatened trade union leader	Place of work
8	Death threat	Hugo Ignacio Téllez Arcila	Picota
9	Physical threat	Mauricio Ríos Moreno	Sogamoso
10	Physical threat	María Ofelia Colorado Marín	Cartago
11	Physical threat	Julio César García Salazar	Manizales
12	Death threat	Roberto Carlos Correa Aparicio	Cúcuta
13	Death threat	Jonny Javier Pabón Martínez	Puerto Tejada
14	Death threat	Jhon Alexander Bedoya Sánchez	Bucaramanga
15	Death threat	Edgar Andrés Quiroz Jaimes	Buga
16	Death threat	Wilmer Rodríguez Morales	Pamplona
17	Death threat	Gerson Méndez	Cúcuta
18	Death threat	Andrés Rolando Bolaños Virama	La Unión, Nariño
19	Death threat	Carlos Fabián Velazco Virama	La Unión, Nariño
20	Death threat	Segundo Adriano Rosero Alvear	La Unión, Nariño
21	Death threat	Eleasid Durán Sánchez	Ocaña
22	Death threat	Rafael Gómez Mejía	Montería
23	Death threat	Helkin Duarte Cristancho	Girón
24	Death threat	Cindy Yuliana Rodríguez Layos	COPED
25	Death threat	Óscar Tulio Rodríguez Mesa	COPED
26	Death threat	Mauricio Olarte Mahecha	Honda
27	Death threat	Nubia Rocío Álvarez Franco	Regional Central
28	Death threat	Frankly Excenover Gómez Suárez	San Andrés
29	Death threat	Jhonny Javier Pabón Martínez	Puerto Tejada
30	Death threat	Mauricio Paz Jojoa	Manizales
31	Death threat	Aura María Pérez Laiseca	COPED

177. While alleging that these acts of violence and intimidation are aimed at destroying the UTP through non-legal recourses, the complainant organizations state that the prison administration should, through dialogue and collective bargaining, find agreed solutions in order to mitigate this anti-union campaign.

C. The Government's reply

Investigation policy for acts of anti-union violence

178. In a communication received on 9 June 2017, the Government indicates that at the end of 2016, the Public Prosecutor's Office created an elite group to expedite and monitor investigations, led by the Deputy Public Prosecutor's Office, which includes the National Directorate for Human Rights, the National Directorate for District Prosecutors' Offices, the Subdirectorate for Public Policies and the Directorate for International Affairs. This working group aims to: (i) consolidate the information from investigations being conducted by the Public Prosecutor's Office in relation to offences that threaten union activity; and (ii) develop and promote strategies for furthering investigations. The Government adds that there are currently 20 prosecutors working on cases involving the murder of trade unionists, 21 judicial assistants, 61 members of the judicial police (investigators) and 67 prosecutors trained to investigate offences relating to the right of association.

Progress in the investigations

179. The Government reports on the specific progress that has been made in relation to Case No. 2761 up until April 2017. The Government indicates that: (i) of the 83 cases of murder and attempted murder assigned to the Public Prosecutor's Office, 79 cases are still open, while the investigations into the other four cases have been concluded; (ii) of these 79 cases, 70 are at the preliminary inquiry stage; (iii) two are under investigation; and (iv) seven are at the trial stage. The Government adds that 14 convictions have already been obtained in 11 cases and 19 persons have been convicted. The Government also provides general data on the investigations into violations of the right of association, indicating that: (i) the Public Prosecutor's Office has dealt with 71 per cent of the complaints filed during the period 2011–16 concerning violations of the rights of assembly and association; (ii) in the past four years, 367 sentences have been handed down in cases involving the murder of trade unionists; and (iii) out of a total of 1,604 cases of attacks on trade unionists that have been investigated, 748 sentences have been handed down, 616 persons convicted and 173 arrest warrants issued.

Protective measures

180. The Government states that it continues to protect trade union leaders and members of the trade union movement and indicates that: (i) between 2014 and 2016, 60 collective protection schemes were in place, protecting more than 200 trade unionists belonging to various national, departmental and local executive committees; (ii) 475 trade union leaders were protected in 2016; and (iii) the budget of the National Protection Unit (UNP) for the protection of trade unionists was 61,142,417,084 Colombian pesos (COP) for 2014, COP55,608,070,428 for 2015 and COP49,723,293,505 for 2016, and a total of COP53,383,078,005 is expected to be allocated for 2017.

Peace process and compensation for the victims of acts of violence

181. The Government emphasizes in its communication the historical nature of the peace agreements signed in 2016 with the FARC-EP. The Government specifically states that the implementation of the peace agreements will entail the creation of: (i) a special peace court; (ii) transitional justice mechanisms; (iii) a truth commission; and (iv) a national commission responsible for guaranteeing human rights and eradicating human rights abuses. The Government adds that this national commission is developing important policies that will help to restore the dignity of the victims of the conflict, with 24,200 victims having already had access to the comprehensive job creation and rural and urban self-employment programmes.

182. The Government sent additional observations in a communication dated 24 October 2017 the content of which will be considered by the Committee at its next examination of the case.

D. The Committee's conclusions

183. *The Committee recalls that Cases Nos 2761 and 3074 concern allegations of numerous murders of leaders and members of the trade union movement and other acts of anti-union violence.*

Investigation initiatives and outcomes

184. *The Committee notes, first, the new information provided by the Government on the efforts made by the public authorities to investigate acts of anti-union violence and to punish the*

guilty parties. In this respect, the Committee notes in particular that: (i) at the end of 2016, the Public Prosecutor's Office created an elite group to expedite and monitor investigations, led by the Deputy Public Prosecutor's Office and comprised of various administrative entities; (ii) this elite group aims to consolidate the information from investigations relating to offences that threaten union activity and to develop and promote strategies for furthering investigations; and (iii) there are currently 20 prosecutors working on cases involving the murder of trade unionists, 21 judicial assistants, 61 members of the judicial police (investigators) and 67 prosecutors trained to investigate offences relating to the right of association.

185. *The Committee notes, second, the information provided by the Government on the progress made in solving and punishing the 83 cases of murder and attempted murder assigned to the Public Prosecutor's Office, indicating that: (i) 79 cases are still open, while the investigations into the other four cases have been concluded; (ii) of these 79 cases, 70 are at the preliminary inquiry stage; (iii) two cases are under investigation; and (iv) seven cases are at the trial stage. The Committee notes the Government's further indication that in relation to these 83 cases, 14 convictions have already been obtained in 11 cases and 19 persons convicted. The Committee also takes note of the information provided by the Government on the progress made in investigating and punishing all the acts of anti-union violence committed in the country, indicating that: (i) out of a total of 1,604 cases of attacks on trade unionists that have been investigated, 748 sentences have been handed down, 616 persons convicted and 173 arrest warrants issued; and (ii) in the past four years, 367 sentences have been handed down in cases involving the murder of trade unionists.*

186. *The Committee takes due note of the ongoing efforts and the various initiatives of the public authorities to improve efficacy in the investigation of acts of violence perpetrated against trade union leaders and trade unionists. The Committee also notes that, with regard to the acts of violence reported in the present case, the number of convictions has increased from 12 to 14 since the last examination of this case in October 2016. However, the Committee notes once again with concern that, though several years have passed since the acts referred to in this case were committed, the vast majority of cases of murder and other acts of violence remain unpunished. In this respect, the Committee is bound to recall that the absence of judgments against the guilty parties creates, in practice, a situation of impunity which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights, and emphasizes the need, in a case in which judicial inquiries connected with the death of trade unionists seem to be taking a long time to conclude, of proceedings being brought to a speedy conclusion [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 52–53]. Under these conditions, taking into account the substantial initiatives already adopted in this regard by the public authorities, the Committee once again urges the Government to continue taking all the measures necessary to ensure that all of the acts of anti-union violence reported in this case are investigated and that the perpetrators and instigators are convicted. In this context, the Committee also requests the Government to provide up-to-date information on the development of the investigations and the judicial status of every act of violence examined in this case. Likewise, the Committee once again requests the Government to provide further information on the murders and other anti-union offences that were apparently not denounced under the present case and that have led to recent convictions.*

187. *Recalling its request for an inter-institutional evaluation to be conducted of the investigation strategies used by the public authorities in cases of violence against trade union leaders and members, the Committee notes with interest the creation of an elite group to expedite and monitor investigations, comprised of various administrative entities, and requests the Government to keep it informed of the results achieved. The Committee nevertheless notes that it still does not have information on the inclusion of social partners in investigative processes in general and, in particular, on the actual operation of the Inter-institutional*

Commission for the Promotion and Protection of Workers' Human Rights, in which the country's main trade union federations are represented. The Committee requests the Government to provide, as soon as possible, information in this regard.

Allegations of violence presented in Case No. 3074

188. *In its previous examination of Case No. 3074, the Committee noted with regret the lack of observations from the Government on the allegations of the Union of Energy Workers of Colombia (SINTRAELECOL) relating to the serious physical injuries sustained by trade union leader, Oscar Arturo Orozco, as a result of the violent repression of a demonstration by the police and to the alleged death threats against trade union leader, Mr Oscar Lema, who was not afforded the protection requested. The Committee notes that the Government sent additional observations in a communication dated 24 October 2017 the content of which will be considered by the Committee at its next examination of the case. In the meantime, the Committee trusts that the Government will ensure that the situation of Mr Oscar Lema has been duly assessed in order to provide him with any protective measures that he might require.*

189. *With respect to the allegations of the Cali Municipal Enterprises Union (SINTRAEMCALI) that the headquarters of the organization and the vehicle of one of its leaders were set on fire in April 2014, the Committee notes the additional observations sent by the Government the content of which will be considered by the Committee at its next examination of the case. In the meantime, the Committee requests the Government to continue to keep it informed of the findings of the investigations conducted by the Public Prosecutor's Office.*

New allegations of violence

190. *The Committee notes with great concern that, in the prison sector, the CGT and UTP allege: (i) the murder of 21 UTP members, including three union leaders, between 5 June 2012 and 24 October 2016; (ii) the attempted murder of a trade union leader on 18 June 2015; and (iii) the existence of death threats against 31 UTP leaders resulting in the filing of the relevant criminal complaints. The Committee also notes that the complainant organizations allege that, while the investigations connected with four murder cases and one case of attempted murder point to the involvement of the FARC-EP, there is no official information on the status of the investigations into 12 of the reported murders. The Committee deeply deplores the alleged acts of violence and threats and recalls that trade union rights can be exercised only in a climate that is free from violence, pressure or threats of any kind against trade unionists, and that it is for governments to ensure that this principle is respected [see* ***Digest****, op. cit., para. 44]. The Committee requests the Government to send as soon as possible its observations on these new allegations of violence and to inform it of the progress made in the investigations under way. The Committee also requests the Government to ensure that the situation of the 31 trade union leaders who are allegedly victims of death threats has been duly assessed in order to provide them with any protective measures that they might require. The Committee requests the Government to keep it informed in this regard.*

Peace process and compensation for the victims of acts of violence

191. *The Committee notes the negotiation and signing of the peace agreements between the Government and the FARC-EP and notes with interest that the implementation of these agreements will entail the creation of various bodies to investigate and punish the acts of violence that have not yet been addressed and to prevent further human rights abuses. The Committee requests the Government, in the context of both Cases Nos 2761 and 1787, also*

relating to numerous cases of anti-union violence, to keep it informed of the examination by these bodies of cases of anti-union violence. Noting that, according to the complainant organizations, several of the murders of members of the prison trade union movement mentioned in the preceding paragraph have involved the FARC-EP, the Committee requests the Government to inform it of any examination of these cases by the bodies created as part of the peace process.

Protective measures

192. *The Committee notes the Government's indication that it continues protecting the trade union leaders and members of the trade union movement and that: (i) between 2014 and 2016, more than 60 collective protection schemes were in place, protecting more than 200 trade unionists belonging to various national, departmental and local executive committees; (ii) 475 trade union leaders were protected in 2016; and (iii) the budget of the UNP for the protection of trade unionists was COP61,142,417,084 for 2014, COP55,608,070,428 for 2015 and COP49,723,293,505 for 2016, and a total of COP53,383,078,005 is expected to be allocated for 2017. The Committee invites the Government to continue the efforts described and to keep it informed in this regard.*

The Committee's recommendations

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

(a) The Committee urges the Government to continue taking all the necessary measures to ensure that all of the acts of anti-union violence reported in this case are investigated and that the perpetrators and instigators are convicted.

(b) The Committee requests the Government to provide up-to-date information on the development of the investigations and the judicial status of every act of violence examined in this case.

(c) The Committee once again requests the Government to provide further information on the types of anti-union offences that were apparently not denounced in this case and that have led to recent convictions.

(d) The Committee requests the Government to keep it informed of the results achieved by the elite group to expedite and monitor investigations.

(e) The Committee requests the Government to provide as soon as possible information on the consultation of social partners during investigations into acts of anti-union violence in general and, in particular, on the operation of the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights.

(f) Pending the next examination of the case, the Committee trusts that the Government will ensure that the situation of Mr Oscar Lema has been duly assessed in order to provide him with any protective measures that he might require.

(g) The Committee requests the Government to continue to keep it informed of the findings of the investigations conducted by the Public Prosecutor's Office

in relation to the attacks on the headquarters of SINTRAEMCALI and on the vehicle of one of its leaders.

(h) The Committee requests the Government to send as soon as possible its observations on the new allegations of murder and other acts of anti-union violence in the prison sector and to inform it of the progress made in the investigations under way.

(i) The Committee requests the Government to ensure that the situation of the 31 trade union leaders in the prison sector, who are allegedly victims of death threats, has been duly assessed in order to provide them with any protective measures that they might require. The Committee requests the Government to keep it informed in this regard.

(j) The Committee requests the Government to keep it informed of any examination of cases of anti-union violence by the bodies created as part of the peace process. The Committee requests the Government to inform it of any examination by these bodies of the aforementioned acts of anti-union violence in the prison sector.

(k) The Committee invites the Government to maintain its efforts to ensure the safety of trade union leaders and trade unionists in the country and to continue to keep it informed in this regard.

(l) The Committee draws the particular attention of the Governing Body to the extreme seriousness and urgency of this case.

CASE NO. 3103

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

Complaints against the Government of Colombia presented by

- **the Single Confederation of Workers of Colombia (CUT) and its affiliated trade unions**
- **the National Union of Social Security Workers (Sintraseguridad Social)**
- **the Cauca branch and Popáyan office of the National Union of Health, Social Security and Allied Service Workers and Public Servants of Colombia (ANTHOC) and**
- **the Union of Electricity Workers of Colombia (SINTRAELECOL)**

Allegations: The complainants allege that during restructuring, several public entities carried out acts of anti-union discrimination and violated the right to bargain collectively in an effort to cause the dissolution of several trade unions. The allegations also concern a work stoppage that was ruled unlawful

194. The complaint is contained in a communication dated 16 May 2014 from the Single Confederation of Workers of Colombia (CUT) and its affiliated trade unions: the National Union of Social Security Workers (Sintraseguridad Social); the Cauca branch and Popayán office of the National Union of Health, Social Security and Allied Service Workers and Public Servants of Colombia (ANTHOC); and the Bolívar office of the Union of Electricity Workers of Colombia (Sintraelecol). The CUT and ANTHOC sent new allegations in a communication dated 10 June 2015.

195. The Government sent its observations in communications dated 22 May and 19 October 2015 and 8 March and 12 August 2016.

196. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

197. In their communication of 16 May 2014, the CUT and its four affiliated trade unions – Sintraseguridad Social, the Cauca branch of ANTHOC, the Popayán office of ANTHOC and the Bolívar office of SINTRAELECOL – allege that during restructuring and privatization processes, several public entities carried out acts of anti-union discrimination and violated the right to bargain collectively in an effort to cause the dissolution of the four trade unions affiliated to the CUT.

198. The complainants state that their complaint includes four cases that concern the same issue and that although institutions have been established in order to ensure respect for the right to organize, these bodies: (i) do not require public enterprises to ensure prior consultation with the trade unions affected by restructuring, liquidation or privatization, preferring to work through decrees and ministerial decisions; (ii) do not respond quickly and effectively to petitions, complaints, requests and other actions concerned with protecting the enhanced job security of workers who enjoy immunity and acts of anti-union discrimination that are directed flagrantly and solely against unionized workers; and (iii) do not have efficient mechanisms through which the affected workers can enforce the payment of benefits required by law or pursuant to an agreement, such as benefits not received owing to demotion or dismissal and of compensation for unfair dismissal.

First case: Sintraseguridad Social

199. The first case concerns Sintraseguridad Social, a trade union representing employees of the Social Security Institute (hereinafter "the Institute"), which was established in 1946 and is currently in liquidation. According to the complainants, Legislative Decree No. 1750 of 26 June 2003 broke up the Institute and replaced it with several state-owned social enterprises, including, among others, the Antonio Nariño Corporation (hereinafter "the enterprise"). The complainants state that when the Institute was broken up, over 75 per cent of its workers were trade union members and over 600 union officials enjoyed trade union immunity. They also allege that none of the trade unions was consulted with regard to the restructuring and that although the Institute was broken up as part of a broader policy for the privatization of public enterprises, the various decisions to transfer union officials who enjoyed immunity and members of Sintraseguridad Social were part a policy designed to weaken the trade union or cause its dissolution, particularly in the light of the fact that no negotiations or consultations on the matter were held.

200. According to the complainants: (i) as a result of the break-up of the Institute, the workers were transferred to the various state-owned social enterprises that had been established;

(ii) through Decision No. 1488 of 25 June 2003, the director of the Institute ordered that 465 union officials who enjoyed immunity be transferred to different offices with a consequent worsening of their working conditions; (iii) on 18 July 2003, Decision No. 1488 was repealed through Decision No. 1731, leaving the transferred workers in legal limbo since there was no order for them to return to their previous posts at the Institute; and (iv) on 25 July 2003, several decisions that once again transferred workers to different entities, prolonging the worsening of their working conditions, were issued.

201. The complainants state that on 27 January 2005, in response to an application for constitutional review filed by union officials, the Constitutional Court issued Decision No. T-041, ordering the automatic transfer of workers within the enterprise. According to the complainants, the enterprise did not comply with the instruction contained in the Decision and the workers had no choice but to continue to work in the entities to which they had previously been assigned, with worsened working conditions. Finally, through Decision No. 1814 of 20 September 2006, the Institute ordered that the workers be dismissed from the entities to which they had previously been assigned and transferred within the enterprise, instructing that they report for work as from 25 September 2006.

202. The complainants state that in the light of this situation, a petition stressing the need to safeguard job security, trade union immunity and the wages and benefits due to workers pursuant to laws and agreements was submitted to the enterprise's manager in September and December 2006. In that connection, they indicate that the guards at the various entities into which the Institute had been broken up were sent a memorandum, instructing them to bar workers from their workstations, and that while the workers had no choice but to report to the enterprise in order to take up their new posts, when they arrived they were denied entry on the grounds that disciplinary proceedings for presumed abandonment of post had been brought against them. The complainants maintain that the workers were thereby dismissed since they were prevented from reporting for duty at both their former posts, owing to their transfer, and their new posts, owing to the disciplinary proceedings. Lastly, they state that through Decree No. 3870 of 3 October 2008, the Government ordered the closing and liquidation of the enterprise and that this liquidation was ordered without the workers having been allowed to take up their new posts or return to their former posts in the entities of the Institute that had been broken up. According to the complainants, of the workers who enjoyed trade union immunity and who had been unlawfully dismissed from the Institute in 2006, having been prevented from entering the enterprise, only a few trade union officials won reinstatement through court rulings.

Second case: the Cauca branch of ANTHOC

203. The complainants state that through separate decrees issued on 9 April 2007, the Cauca departmental health office (hereinafter "the office") was closed and liquidated and numerous state-owned social enterprises were established as decentralized entities under the departmental health department. They maintain that at the time of the liquidation the office employed over 3,000 workers, including career and temporary public servants and non-career employees, of which some 1,300 – including 66 officials with trade union immunity – were members of the Cauca branch of ANTHOC. According to the complainants, the Cauca branch of ANTHOC (the trade union for health-care workers in the department of Cauca) and the other trade unions concerned were not consulted regarding the closure and liquidation of the office. They also indicate that in the light of the imminent liquidation, the Cauca branch of ANTHOC requested collective bargaining to ensure respect for the workers' minimum guarantees established by law and in signed agreements and that the office violated those agreements by dismissing all of the workers without regard for what had been agreed. According to the complainants, the liquidation was part of a policy designed to weaken the trade union and, ultimately, cause its dissolution, particularly in the light of the fact that although agreements were signed, they were never implemented.

204. According to the complainants, in December 2007 the office that was in liquidation informed the workers that their posts had been abolished. Although court authorization for dismissal of the workers who enjoyed immunity had been requested, the dismissals were carried out without waiting for the court's decision. For this reason, the judges closed the case, declaring it moot. The complainants also state that on 12 February 2008, the workers who enjoyed trade union immunity submitted a final administrative appeal to the office. According to the complainants, although all career public servants in the field of administration were granted compensation for the abolition of posts during the liquidation, this compensation was not granted to public servants on temporary contracts, some of whom had accrued over 30 years of service. The employees on temporary contracts, who were the victims of unfair discrimination, brought an administrative complaint before the Ministry of Labour. Having received no reply, they appealed for annulment of the administrative decisions but the case was closed.

Third case: the Popayán office of ANTHOC

205. The complainants state that the members of the Popayán office of ANTHOC are employed by the San José de Popayán University Hospital, a state-owned social enterprise that provides specialized health services in the city of Popayán. They also indicate that the employees established the Popayán office of ANTHOC in 1991 and, in 1994, signed a collective labour agreement with the hospital, which the latter implemented without incident until 2001. They state that on 24 August 2001, the hospital board decided to reclassify the workers and that, as a consequence of this reclassification, over 300 non-career employees became public servants. According to the complainants, because, under the legislation in force at the time, public servants could not be included in collective labour agreements covering non-career employees, over 300 workers lost coverage under the 1994 agreement. The complainants state that the reclassification of non-career employees through Agreement No. 124 (2001) had an impact on all of the union officials of the Popayán office of ANTHOC and constitutes a violation of trade union immunity, which prohibits the worsening of working conditions.

206. The complainants emphasize that none of the trade unions in question, including the Popayán office of ANTHOC, were consulted with regard to the workers' reclassification and maintain that it was carried out because the hospital was allegedly failing economically and financially and that it remedied the problem by failing to implement the collective labour agreement. They also state that after ceasing to apply the agreement to over 300 workers, the hospital dismissed 116 workers, all of whom were members of the Popayán office of ANTHOC; this shows that the hospital's purpose was to reclassify the unionized workers covered by the collective labour agreement in order to facilitate their subsequent dismissal since the agreement entitled unionized workers to benefits in the event of dismissal without just cause.

207. The complainants state that on 26 July 2012, the Administrative Disputes Chamber of the Council of State annulled Agreement No. 124 of 24 August 2001, through which the hospital board had reclassified the hospital's non-career employees, on the grounds that the board had not been competent to issue it. According to the complainants, as a result of this decision to annul the Agreement: (i) all of the workers who had been reclassified were entitled to be granted and paid the benefits required by law or under the collective labour agreement that they had not received since December 2001; and (ii) the workers who had been dismissed without just cause or because their posts had been abolished were entitled to reinstatement with no break in service or to compensation for unfair dismissal and to be granted and paid the benefits to which they were entitled under the collective labour agreement but had not received. The complainants allege that the hospital has yet to meet these obligations; that, on 3 January 2013, the Popayán office of ANTHOC requested the hospital's management to implement the aforementioned decision; and that, on 21 January 2013, the management denied this request. Lastly, they state that, on 6 February 2013, the Popayán office of

ANTHOC brought an administrative complaint in respect of these events before the Ministry of Labour and that the case was closed on the grounds that the Ministry was not competent to consider it.

Fourth case: the Bolívar office of SINTRAELECOL

208. The complainants indicate that the state-run electricity companies, Electribol and Electrificadora de Sucre, now known as Electrocosta and Electricaribe (hereinafter "the enterprise") and owned by the Spanish multinational corporation, Unión Fenosa, were privatized between 1998 and 2000 and they allege that the electricity workers' union, SINTRAELECOL, was never consulted with regard to the privatization. They also maintain that although the privatization was part of a broader policy of privatizing public enterprises, it was also designed to weaken the trade union and cause its dissolution.

209. The complainants state that the electricity companies and SINTRAELECOL had signed a collective labour agreement that established extra-legal benefits for workers in the various plants and that, during the privatization process, misleading voluntary retirement plans were developed. As a result, over 1,400 workers retired in what amounted to unfair and unlawful dismissal. According to the complainants, the electricity companies failed to follow the procedure for dismissing workers that was set out in the collective labour agreement, which provided that they could only do so for the just causes established by law. In the light of that situation, the workers who had been dismissed brought regular complaints before the labour court, asserting their right to reinstatement. According to the complainants, the Supreme Court ruled that while the workers who had been dismissed could not be reinstated because their posts had been abolished, that fact did not relieve the electricity companies of the obligation to pay compensation for dismissal; the complainants maintain that, to date, no such payment has been made. They also state that the Supreme Court, in its ruling, ignored the collective labour agreement.

Other allegations

210. In their communication of 10 June 2015, the CUT and ANTHOC state that, in the light of the liquidation of health-care entities in various parts of the country and of serious cases of corruption and malfeasance on the part of local governments, ANTHOC called for the holding of protests and limited work stoppages from 20 to 28 August 2013 while ensuring the provision of minimum emergency and special care services. They also state that, on 22 October 2013, the Ministry of Labour filed a complaint against ANTHOC, requesting that the work stoppage be declared unlawful pursuant to Act No. 1210 (2009) and arguing that ANTHOC was guilty of failing to provide essential public health services in several hospitals.

211. According to the complainants, the Labour Chamber of the High Court of the judicial district of Ibagué, in a first instance ruling, rejected the Ministry's arguments and concluded that the work stoppage had had no impact on the provision of health care to any hospital patients. However, on 30 July 2014, the Labour Chamber of the Supreme Court declared the work stoppage carried out by ANTHOC as from 20 August 2013 unlawful. The CUT and ANTHOC maintain that while the right to strike is not absolute, it cannot be restricted as the Supreme Court has done and that, since the Court's ruling that it was unlawful to strike, ANTHOC's members have been potentially at risk since the various employers may initiate disciplinary proceedings against union officials, seeking sanctions such as the suspension or dismissal of workers.

212. The complainants state that the Constitution establishes the obligation to ensure the right to strike and to regulate strikes by law and that Colombia has failed to issue regulations on minimum services in order to ensure such exercise even though the Constitutional Court has

urged Congress to do so. They draw attention to rulings of the Constitutional Court, particularly Decision No. C-796/2014 (in which the Court urged Congress to address the issue of the right to strike in the specific petroleum sector within two years). The CUT and ANTHOC request that measures be taken to ensure that: (i) the laws are amended in order to ensure the provision of minimum services during strikes in enterprises that provide essential public services stricto sensu; and (ii) no disciplinary proceedings against ANTHOC members for having exercised the right to strike or protest are initiated or continued in cases where minimum services were provided.

B. The Government's reply

213. In its communication of 22 May 2015, the Government makes the general statement that section 189 of the Constitution empowers the President of the Republic to carry out the restructuring of and to establish new state-owned social enterprises and that the Committee on Freedom of Association is not competent to consider dismissals such as those arising from structural adjustment and flexibility programmes prompted by business bankruptcies, closures or mergers. With regard to collective bargaining in the public sector, the Government emphasizes that pursuant to Decree No. 1092 of 24 May 2012 on the terms and procedures applicable to collective bargaining between public servants' trade unions and public entities, the right to bargain is not absolute; non-labour-related issues such as organizational structure, staffing, administrative procedures, career advancement in the administration, disciplinary proceedings and benefit systems are excluded from bargaining.

214. The Government states that, in this case, it is extremely important to understand the definition of "trade union immunity" under the Constitution, the law and case law. In that connection, it stresses that: (i) a constitutional guarantee protects workers and public servants who are trade union officials so that they can fulfil their responsibility to defend the union's interests freely without being prosecuted or subjected to retaliation by employers; (ii) "trade union immunity" means that employers that wish to dismiss employees who enjoy such immunity must first demonstrate, with confirmation by a labour court, that they have just cause; even during restructuring, such prior authorization must be sought; (iii) however, trade union immunity is not absolute; it may be restricted during, for example, the restructuring of public entities. This issue has been examined at length by the Constitutional Court, which has recognized that limitations on trade union rights must be reasonable and proportionate. On this last point, the Government emphasizes that it is clear from the case law that the purpose of lifting such immunity is to verify the employer's allegations as to the reason for the dismissal and determine whether it is lawful. It recalls that, according to section 410 of the Labour Code, the "just causes" for dismissal include the liquidation or permanent closure of an enterprise or establishment, the total or partial suspension of work by the employer for a period of more than 120 days, and the reasons for deeming a contract to have been terminated that are listed in sections 62 and 63 of the Code. The Government also states that it is for the regular labour courts to deal with complaints concerning the reinstatement of public servants on grounds of trade union immunity and that the procedure for lifting such immunity is set out in articles 113–118 of the Code of Labour Procedure.

First case: Sintraseguridad Social

215. In its communication of 19 October 2015, the Government states that the Constitutional Court has established, in Decisions Nos C-306 and C-314 (2004), that the Government was empowered to issue Decree No. 750 (2012) ordering the Institute's liquidation and that the change in the labour regime governing the Institute's non-career employees, who became public servants pursuant to Decree No. 1750 (2003), did not constitute a violation of the right to freedom of association. The Government also states that: (i) the Institute's liquidator developed and implemented a voluntary retirement plan for all workers employed by the entity as at 28 September 2012, with the exception of those who were in pre-retirement; (ii) a

total of 535 unionized and non-unionized workers signed up for this retirement plan and compensation was paid to all workers who were not in pre-retirement as at the date on which the entity was closed (31 March 2015), whether or not they were trade union members; (iii) prior to the end of the liquidation process, the liquidator deposited the remaining funds owed to all workers who had been dismissed and were parties to the reinstatement appeal in the Social Security Institute Liquidation Reserve Fund (PARISS) and since the Court could not order reinstatement with an entity that no longer existed, it ordered the payment of compensation; and (iv) 18 of the 113 workers who were dismissed on 31 March 2015 and whose trade union immunity was lifted were parties to the appeal for reinstatement; thus, only they are legally entitled to receive compensation pursuant to the ruling of the Constitutional Court.

216. The Government states that on 8 October 2015, representatives of PARISS and the Union of Social Security Institute Workers (SINTRAISS), a representative of the Office of the Attorney-General, two representatives of the International Labour Organization (ILO), representatives of the following trade union federations: the General Confederation of Workers (CGT), the CUT and the Confederation of Workers of Colombia (CTC), and a representative of the Ministry of Labour met within the framework of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT) and agreed, among other things: (i) to resolve 18 complaints concerning the reinstatement of workers (who had been dismissed on 31 March 2015 through proceedings for the lifting of immunity) by paying compensation equivalent to six months' wages; and (ii) to review the cases of the workers who were employed by the Institute as at 28 September 2012 and to whom the retirement plan was not offered because they were deemed to be in pre-retirement. Furthermore, in its communication of 12 August 2016, the Government states that the legal proceedings brought by PARISS, with due regard for its legal and contractual obligations concerning the dissolution, cancellation and liquidation of SINTRAISS, resulted in an oral decision issued by the 35th labour circuit court of Bogotá on 10 May 2016, which, in the absence of an appeal, was declared final. The Government also reports that between March and July 2016, several meetings between representatives of PARISS, the Office of the Attorney-General and the Office of the Ombudsman were held and that a decision was taken to sign, in the presence of a labour inspector, a conciliation agreement reflecting the agreement reached by the parties regarding, specifically, the payment of a bonus to the people involved in these proceedings.

Second case: the Cauca branch of ANTHOC

217. With regard to the allegations concerning the Cauca branch of ANTHOC, the Government states that the office has informed it that a review of the databases shows that no administrative complaints were brought and no preliminary investigations into complaints by trade unions were conducted in 2014.

Third case: the Popayán office of ANTHOC

218. In its communication of 22 May 2015, the Government transmits the hospital's comments on the allegations made by the Popayán office of ANTHOC concerning the alleged violation of the collective labour agreement, the worsening of labour conditions, the dismissal of workers with trade union immunity without authorization from the courts and the dissolution of the trade union.

219. According to the hospital, the collective labour agreement signed with ANTHOC in 1994 is still in force and the trade union has not been dissolved. The hospital also states that the aforementioned collective labour agreement applies to non-career employees and does not cover workers who are legally classified as public servants. With regard to the reclassification of non-career employees as public servants, the hospital indicates that the

legal principles established in Act No. 10 (1990), as ratified by Act No. 100/93, were followed and that these are public policy standards; their implementation is compulsory and there can be no consultation whatsoever in that regard. Section 26 of Act No. 10 (1990), the Social Security System Organization Act, provides that: (i) posts may be either non-career or career; (ii) career employees may be seconded to non-career posts without losing their career status in the administration; and (iii) non-career employees are those who perform non-management tasks in order to maintain a hospital's physical plant or provide general services in such an institution. The hospital also indicates that it requested the lifting of trade union immunity as a consequence not of the reclassification of non-career employees pursuant to Act No. 10 (1990), but of the restructuring plan.

220. Lastly, with regard to the allegation that the hospital refused to implement the Council of State's decision cancelling Agreement No. 124 (2001), through which the hospital's board had reclassified the non-career employees and thus denied the benefits under the collective labour agreement to over 300 public servants, the Government states that the Council of State's decision declared the Agreement null and void on grounds of non-competence since it is for Congress (by enacting legislation), the Departmental Assembly (by issuing ordinances) and the Municipal Council (through agreements) to establish the structure of the administration.

Fourth case: the Bolívar office of SINTRAELECOL

221. The Government states that the allegations concern events that occurred 16 years ago and that, the workers were not dismissed; rather, they signed up for a voluntary retirement plan approved by the Ministry of Labour. It also explains that the Supreme Court confirmed the lower courts' rulings in favour of the electricity companies and did not state in any paragraph of its decisions "that the fact that reinstatement was not possible does not relieve the electricity companies of the obligation to pay compensation for dismissal …". According to the Government, the decisions on constitutionality make no mention of this matter.

222. The Government also emphasizes that SINTRAELECOL had, and still has, a total of eight branches in the enterprise (Atlántico, Magdalena, Bolívar, Cesar, La Guajira, Sucre, Córdoba and Magangué) both during and after the privatization. Furthermore, there was a legal transfer of assets between these eight electricity companies and the enterprise, which, in the field of labour relations, constitutes a change of employer; in other words, the workers continued to enjoy all of the working conditions established by agreement between SINTRAELECOL and each of the electricity companies at the time of the privatization. Furthermore, seven collective labour agreements for the period 2011–2015 were signed with seven trade unions in 2011; this shows that the trade unions continue to play an important role within the enterprise.

223. In its communication of 8 March 2016, the Government emphasizes that the Committee on Freedom of Association has acknowledged that the right to strike can be restricted or even prohibited in the case of the public service or essential services and states that the Labour Chamber of the Supreme Court, in Decision No. SL11680-2014 of 30 July 2014, ruled that the work stoppage that ANTHOC carried out in several of the country's hospitals as from 20 August 2013 was unlawful. In that ruling, the Court recalled that sections 48 and 49 of the Constitution establish the right to social security and state that health care is an essential public service for which the State is responsible and which, by law, must be provided with due regard for the principles of efficiency, universality and solidarity. The Constitutional Court, among others, has reiterated this position in its Decisions Nos CC C-473/94, CC C-450/95, CC C-122/12, CC T-423/96 and T-586/99, concluding that strikes in hospitals and clinics are expressly prohibited precisely because they provide an essential public service: health care.

224. In its decision, while acknowledging that emergency and hospitalization services had been provided by all health centres, the Court considered that the trade union had ignored the prohibition of a general work stoppage in the sector on the grounds that the latter provides an essential public service. The Court concluded that there had been a suspension of the services that the various hospitals were required to provide in an uninterrupted, timely and effective manner and that this had had an impact on the provision of an essential public service – health care – to users who were unable to receive outpatient and specialized care; undergo scheduled surgery; receive physical therapy, dental care and x-rays; use the pharmacy; or be billed owing to ANTHOC's call for a work stoppage with blatant disregard for the provisions of section 450 of the Labour Code and section 56 of the Constitution, which prohibits collective work stoppages in entities that provide an essential public service.

C. The Committee's conclusions

225. *The Committee notes that in this case, the complainants allege that during restructuring, liquidation and privatization, several public entities carried out acts of anti-union discrimination and violated the right to bargain collectively in an effort to cause the dissolution of four trade unions affiliated to the CUT: the National Union of Social Security Workers (Sintraseguridad Social), the Cauca branch and the Popayán office of the National Union of Health, Social Security and Allied Service Workers and Public Servants of Colombia (ANTHOC) and the Union of Electricity Workers of Colombia (SINTRAELECOL). The complainants also make allegations regarding a ruling that a work stoppage carried out by ANTHOC in 2013 in several of the country's hospitals was unlawful.*

226. *The Committee observes that, in all four cases, the complainants allege that: (i) the restructuring, liquidation or privatization of a public enterprise was carried out without consulting with the trade unions concerned and in an effort to cause their dissolution; and that (ii) while institutions have been established in order to ensure respect for the right to organize, these bodies are not diligent in requiring public enterprises to ensure prior consultation with the trade unions concerned; do not respond quickly and effectively to petitions, complaints and requests concerning anti-union discrimination; and do not have efficient mechanisms through which the affected workers can enforce the payment of benefits not received owing to demotion or dismissal and of compensation for unfair dismissal.*

227. *In that regard, the Committee takes note of the Government's statement that section 189 of the Constitution empowers the President of the Republic to restructure, break up and establish new state-owned social enterprises and that the Committee on Freedom of Association is not competent to consider dismissals such as those arising from structural adjustment and flexibility programmes prompted by business bankruptcies, closures or mergers. With regard to the concept of trade union immunity, the Committee takes note of the Government's statement that even though it is a constitutional guarantee and court authorization for lifting such immunity must be requested even during restructuring, it may be restricted during, for example, the restructuring of public entities; and that the issue has been examined at length by the Constitutional Court, which has recognized that limitations on trade union rights must be reasonable and proportionate. The Committee also takes note of the Government's emphasis that the right of public servants' trade unions to bargain with public entities is not absolute; non-labour-related issues such as organizational structure, staffing, administrative procedures, career advancement in the administration, disciplinary proceedings and benefit systems are excluded from bargaining.*

228. *The Committee recalls that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions. In any case, the Committee can only regret that in the rationalization and staff-reduction process,*

the government did not consult or try to reach an agreement with the trade union organizations [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1079]. Noting that the Government, in its reply, makes no mention of the holding of consultations with the complainants or other concerned trade unions regarding the impact of the programmes for restructuring, liquidation and privatization of the four entities mentioned in this case, the Committee requests the Government, in the future, to consult the trade unions concerned with regard to the impact of restructuring programmes on employment and of streamlining on employee working conditions.*

229. *With regard to the case of Sintraseguridad Social and the allegation that of the Institute's workers who had been dismissed in 2006 in violation of their trade union immunity and were prevented from entering the enterprise, only a few union officials won reinstatement through court rulings, the Committee takes note of the Government's statement that: (i) a total of 535 unionized and non-unionized workers signed up for the voluntary retirement plan for all workers employed by the entity as at 28 September 2012, with the exception of those who were in pre-retirement; (ii) prior to the end of the liquidation process, the liquidator deposited the remaining funds owed to all workers who had been dismissed and were parties to the reinstatement appeal in the Social Security Institute Liquidation Reserve Fund (PARISS) and since the court could not order reinstatement with an entity that no longer existed, it ordered the payment of compensation; (iii) on 8 October 2015, representatives of PARISS and the Union of Social Security Institute Workers (SINTRAISS), a representative of the Office of the Attorney-General, two representatives of the International Labour Organization (ILO), representatives of the following trade union federations: the CGT, the CUT and the CTC, and a representative of the Ministry of Labour met within the framework of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT) and agreed, among other things, to resolve 18 complaints concerning the reinstatement of workers (who had been dismissed on 31 March 2015 through proceedings for the lifting of immunity) by paying compensation equivalent to six months' wages and to review the cases of the workers to whom the retirement plan had not been offered because they had been deemed to be in pre-retirement; and (iv) in March and July 2016, several meetings between representatives of PARISS, the Office of the Attorney-General and the Office of the Ombudsman were held and it was agreed that a bonus would be paid to the people involved in these proceedings.*

230. *While noting with interest the agreements reached with the trade union federations within the framework of the CETCOIT, the Committee observes that these agreements concern the workers who were employed by the Institute as at 28 September 2012; thus, it appears that they do not address the situation of the workers who are alleged to have enjoyed trade union immunity and been unlawfully dismissed in 2006. In these circumstances, the Committee requests the Government to send its observations regarding the situation of the workers who, according to the complainants, enjoyed trade union immunity and were unlawfully dismissed in 2006 and thus could not be offered the retirement plan because they were not employed by the Institute as at 28 September 2012.*

231. *With regard to the case of the Cauca office of ANTHOC, the Committee takes note of the allegation that: (i) the workers who enjoyed trade union immunity were dismissed from the office on 12 December 2007 without court authorization for the lifting of immunity and that, for this reason, they submitted an administrative appeal to the office on 12 February 2008, requesting reinstatement; and (ii) although all career public servants in the field of administration were granted compensation for the abolition of posts during the liquidation, this compensation was not granted to public servants on temporary contracts, some of whom had accrued over 30 years of service; they brought an administrative complaint before the Ministry of Labour, to which they received no reply, and an appeal for annulment of the administrative decisions, in which the case was closed. In that connection, the Committee takes note of the Government's statement that, according to the office, a review of the*

databases shows that no administrative complaints were brought and no preliminary investigations into complaints by trade unions conducted in 2014. The Committee observes that the complainants' communications do not show that the workers brought before the courts an appeal against the lifting of trade union immunity. The Committee also observes that while the complainants allege that the workers on temporary contracts were not compensated for the abolition of their posts, they do not state that this lack of compensation was limited to trade union members or that some workers on temporary contracts might have been denied compensation because they were union members. In these circumstances, the Committee will not pursue its examination of these allegations.

232. *With regard to the case of the Popayán office of ANTHOC, the complainants allege that:(i) through Agreement No. 124 (2001) of 24 August 2001, the hospital's board reclassified the hospital's non-career employees, thus depriving them of benefits under a collective labour agreement signed in 1994; (ii) the purpose of this reclassification was to cause the trade union's dissolution, particularly in the light of the fact that, that after ceasing to apply the agreement, the hospital dismissed 116 workers, all of whom were members of the trade union, without compensation for unfair dismissal or abolition of post; (iii) although the Administrative Disputes Chamber of the Council of State, in a decision issued on 26 July 2012, annulled Agreement No. 124 of 24 August 2001, the hospital has refused to implement this decision; and (iv) on 6 February 2013, the Popayán office of ANTHOC brought an administrative complaint in respect of these events before the Ministry of Labour and that the case was closed on the grounds that the Ministry was not competent to consider it.*

233. *In that regard, the Committee notes that the Government has transmitted the hospital's observations to the effect that: (i) the collective labour agreement signed with ANTHOC in 1994 is still in force, but it applies only to non-career employees since it cannot not cover workers who are legally classified as public servants; (ii) with regard to the reclassification of workers as non-career employees and public servants, the legal principles established in Act No. 10 (1990), as ratified by Act No. 100/93, were followed; these are public policy standards, their implementation is compulsory and there can be no consultation whatsoever on their implementation; and (iii) the Council of State declared the hospital board's Agreement No. 124 of 24 August 2001 null and void on grounds of non-competence since it is for Congress (by enacting legislation), the Departmental Assembly (by issuing ordinances) and the Municipal Council (through agreements) to establish the structure of the administration. While taking note of the Government's observations, the Committee observes that the Government has not replied to the allegation regarding the hospital's refusal to implement the decision of the Administrative Disputes Chamber of the Council of State and requests it to do so. With respect to the status of more than 100 workers who, according to the allegation, were members of the union and were dismissed without compensation for unfair dismissal or abolition of post, the Committee requests the complainants to specify their names so that the Government can provide its observations on the matter.*

234. *With regard to the Bolívar office of SINTRAELECOL, the Committee takes note of the complainants' allegation that: (i) during the privatization of the state-run electricity companies between 1998 and 2000, misleading voluntary retirement plans that amounted to unfair and unlawful dismissal were developed; (ii) the electricity companies failed to follow the procedure for the dismissal of workers that was set out in the collective labour agreement, as a result of which the workers appealed to the labour courts for reinstatement; and (iii) the Supreme Court, in its ruling, ignored the collective labour agreement and ruled that since reinstatement was impossible because the posts had been abolished, the electricity companies must pay compensation for dismissal, which, to date, they have not done. On this point, the Committee takes note of the Government's statement that: (i) these events occurred 16 years ago and the electricity companies did not dismiss the workers, rather, they signed up for a voluntary retirement plan approved by the Ministry of Labour; and (ii) the Supreme Court did not state in any paragraph of its ruling that the fact that reinstatement was not*

possible did not relieve the electricity companies of the obligation to pay compensation for dismissal. The Committee observes that although the complainants allege that the Supreme Court did not take into account the collective labour agreement regulating the grounds for dismissal, the Government states that the Court considered that the provisions of the agreement were not applicable in the case of voluntary retirement. The Committee therefore observes that this issue concerns the applicability of a collective labour agreement's provisions on dismissal and, since it is for the national courts to take decisions on such matters, the Committee will not pursue its examination of this allegation.

235. *With regard to the allegations concerning the ruling that a work stoppage carried out by ANTHOC was unlawful, the Committee notes that: (i) the complainants and the Government state that while the court of first instance did not declare that the work stoppage, carried out as from 20 August 2013 in several of the country's hospitals, was illegal because it had had no impact on the provision of health-care services, the Labour Chamber of the Supreme Court, in a decision issued on 30 July 2014, recalled that sections 48 and 49 of the Constitution establish that health care is an essential public service for which the State is responsible and which, by law, must be provided with due regard for the principles of efficiency, universality and solidarity; and that, as the Constitutional Court has reiterated in its Decisions Nos CC C-473/94, CC C-450/95, CC C-122/12, CC T-423/96 and T-586/99, strikes in hospitals and clinics are expressly prohibited precisely because they provide an essential public health service: health care; (ii) the complainants state that, since the Court's ruling that it was unlawful to strike, ANTHOC's members have been potentially at risk since the various employers may initiate disciplinary proceedings against union officials, seeking sanctions such as the suspension or dismissal of workers; (iii) recalling Decision No. C-796/2014 of the Constitutional Court (urging Congress to address the issue of the right to strike in the specific petroleum sector within two years), the complainants request that measures be taken to ensure that: the provision of minimum services during strikes against enterprises that provide essential public services stricto sensu is ensured and that no disciplinary proceedings against ANTHOC members for having exercised the right to strike or protest are initiated or continued; and (iv) the Government, for its part, maintains that the Committee on Freedom of Association has acknowledged that the right to strike may be restricted, including in the case of the public service or essential services.*

236. *The Committee observes that the allegations concern the health-care sector and recalls that the right to strike may be restricted or prohibited in the hospital sector, which is considered to be an essential service [see **Digest**, op. cit., para. 585]. Furthermore, while taking note of the allegation that, since the Supreme Court's ruling that it was unlawful to strike, ANTHOC's members have been potentially at risk since the various employers may initiate disciplinary proceedings against union officials, seeking sanctions such as the suspension or dismissal of workers, the Committee observes that the complainants have not alleged that there have been any suspensions or dismissals since the ruling that the strike was unlawful, which was issued three years ago. In these circumstances, while recalling that where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services [see **Digest**, op. cit., para. 595], the Committee will not pursue its examination of this allegation.*

The Committee's recommendations

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

(a) The Committee requests the Government, in the future, to consult the trade unions concerned regarding the impact of restructuring programmes on employment and of streamlining on employee working conditions.

(b) The Committee requests the Government to provide its observations on the status of the workers who, according to the complainants, enjoyed trade union immunity and were unlawfully dismissed in 2006 and thus could not be offered the retirement plan because they were not employed by the Institute as at 28 September 2012.

(c) The Committee requests the Government to provide its observations on the hospital's refusal to implement the Council of State's decision. Furthermore, with regard to more than 100 workers who, according to the allegation, were all members of the union and were dismissed without compensation for unfair dismissal or abolition of post, the Committee requests the complainants to specify their names so that the Government can provide its observations on the matter.

CASE NO. 3238

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

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

Allegations: The complainant organizations allege the unilateral adoption of government guidelines affecting the autonomous nature of collective bargaining without full consultation with social partners; the qualification of a strike as illegal with regard to its objective of opposing government policy; criminal charges and prosecution of a union leader in relation to the organization of a strike and participation in demonstrations; use of excessive police force against peaceful protestors resulting in injury and arrest and prosecution of union members and officials for participation in demonstrations

238. The complaint is contained in a communication dated 30 August 2016, submitted by the International Trade Union Confederation (ITUC), the Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU).

239. The Government sent its observations in a communication received on 29 September 2017.

240. The Republic of Korea 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

241. In their joint communication dated 30 August 2016, the ITUC, FKTU and KCTU indicate that the complaint concerns the unilateral imposition of laws and policies which violate the rights to freedom of association, to organize and to bargain collectively. They further allege the arrest and prosecution of trade union leaders for their participation in demonstrations and strikes to protest against government policies affecting workers' rights and interests and excessive use of force by the police against peaceful demonstrators. The complainants affirm that the highly excessive prison sentences sought by prosecutors and handed down by judges clearly show that the Government intends to send a very strong message to workers, discouraging the exercise of their rights to assemble and associate.

242. With regard to the unilateral labour law and policy reforms, the complainants refer to the "Comprehensive Plan for Temporary Workers" announced on 29 December 2014 in furtherance of measures for the "improvement of the dual structure in the labour market". According to the complainants, the Plan eased the conditions for the dismissal of workers, introduced a job-skill and performance-based wage system, relaxed the regulations governing change in employment rules, extended the term limits of fixed-term workers and expanded the categories in which labour dispatch is allowed. The Comprehensive Plan was announced while within the Economic and Social Development Commission (ESDC) negotiations on the improvement of the dual structure in the labour market were ongoing since September 2014 and no consensus was yet reached as to the terms of the Plan.

243. The complainants further indicate that after very difficult negotiations, a Tripartite Agreement on Structural Reforms of the Labour Market (hereafter, the Tripartite Agreement) was concluded on 15 September 2015. However, agreement was not reached on certain subjects on which the ruling party subsequently attempted to pass five bills. The subjects covered in the five bills were the extension of the term limits of fixed-term workers, the expansion of business categories in which labour dispatch is allowed, the reduction of the scope of the ordinary wage, the reduction of additional wages for extended working hours on weekends and holidays and prolongation of the employment period required for the entitlement of unemployment benefits from the current 180 days to 270 days. As a result of this Government initiative, the FKTU that had participated in the tripartite discussions, withdrew from the Tripartite Agreement and began a full-scale strike.

244. As a result of the FKTU withdrawal from the Tripartite Agreement and the subsequent strikes, the Government had to face difficulties at the National Assembly and the five bills did not pass. So the Government unilaterally announced the *Guidelines on Easing Regulations on Dismissal of Underperformers* and the *Guidelines on Disadvantageous Changes in Employment Rules* (hereafter, Government Guidelines). On 30 December 2015, it invited scholars and researchers favourable to its position to an expert round table on the subject and shared the essential features of the Guidelines. On 17 January 2016, the Vice-Minister of Labour and Employment declared that if the FKTU refused to participate in the consultation process, the Government Guidelines would be implemented in cooperation with other labour organizations. On 22 January, the Ministry of Employment and Labour (hereafter, the Ministry) released the Guidelines earlier than initially planned. The Government was expected to submit a report to the Special Committee on Structural Reforms of the Labour Market of the Tripartite Commission and proclaim the Guidance as part of the follow-up measures to the Tripartite Agreement. However, this stage was skipped and the Government Guidelines were hastily announced on 22 January 2016, shortly after the policy briefing to the President on 20 January. This was in clear violation of the Tripartite

Agreement, under which the parties agreed to draw up measures only after consultations. The Government Guidelines are not legally binding, however the Ministry uses them to advise employers and they are likely to have a broad effect on the labour market.

245. The complainants provide the following details as to the content and the prospective impact of the Government Guidelines. They indicate that although the Government claims that the Guidelines will create an atmosphere where people are compensated for their work, in reality they will make it easier for employers to dismiss workers – and so neutralize the negotiation power of unions and labour representatives – modify wages, and introduce a peak wage system. The *Guidelines on Easing Regulations on Dismissal of Underperformers* provide that "low performance at work" alone may constitute a ground for dismissal, whereas the law allows for dismissal only in very limited circumstances, not including "low performance", and on specific grounds for which the worker may be held liable. The Guidelines cannot be justified under sections 23 or 94 of the Labour Standards Act currently in force or any other legal precedents. They provide proposed procedures for dismissal of underperformers and recommend that these procedures be included in company employment rules or collective agreements, which, in the complainants' view, amounts to giving the employers an explicit direction to introduce change disadvantageous to workers in employment rules and collective agreements. The complainants indicate that unions have also expressed serious concern about the likelihood that companies use the Guidelines to disguise restructuring measures. As performance reviews and reassignments are conducted by the employer without any other oversight or control, there is no guarantee that the Guidelines will be meaningfully followed. Furthermore, companies are likely to interpret the Guidelines in the sense that they can dismiss any worker as long as they comply with the formal requirements provided therein. The likelihood that they be misused to justify excessive dismissal measures on the grounds of underperformance or worsen wages and working conditions is quite strong. According to the complainants, through the adoption of these Guidelines, the Government is undermining negotiations between labour and management and causing imbalances in their negotiation power.

246. With regard to the *Guidelines on Disadvantageous Changes in Employment Rules*, the complainants indicate that they allow companies to adjust their wage system as a consequence of the extension of the retirement age to 60. This could mean that wages will reach a peak once the workers reach the age of 55, and then will decline incrementally until the age of retirement. Under the Government's new plan, authorities will provide subsidies and consulting to some 30 private companies and 550 factories in six key industries including shipping, finance, medicine and the automobile industry upon the adoption of the wage peak system and the abolition of seniority-based salary systems. According to the complainants, application of peak wages would alter workplace rules in a manner that is unfavourable to employees. Section 94(1) of the Labour Standards Act provides that the consent of a trade union or the majority of workers must be obtained if the introduction of the wage peak system or the change-of-wage system degrades wage or working conditions; whereas the Ministry's new Guidelines enable companies that are unlikely to receive the consent of a majority of their workers, to change the workplace rules irrespective of their disagreement. The complainants state that unions are concerned that the Government Guidelines are likely to give employers the upper hand in determining a variety of working conditions through reforming the wage structure, which will include not only the peak wage system, but also, at a later stage, a performance-based pay system.

247. The complainants allege that the Government Guidelines are in clear violation of Korean law, the rights to freedom of association and collective bargaining guaranteed by ILO Conventions Nos 87 and 98, and the ILO Constitution. The Guidelines express Government support for easier dismissal of workers, and expressly favour the introduction of procedures for such dismissals into collective agreements. According to the complainants, this will be undoubtedly used against trade unions in bargaining, despite incompatibility with the existing law. By firmly recommending that workers take a wage cut on the basis of the

unproven idea that the reduction in wages of older workers will lead to the hiring of younger ones, the Government interferes in wage negotiations. The Government Guidelines interfere with the autonomy of negotiations between workers and employers, as they predetermine the basis on which the parties should agree on a core subject of bargaining. Besides, the guidance for the reduction in the wages of older workers also violates the existing law and is likely to be used to undermine wage schedules negotiated between unions and employers. The result will be a reduction of wages for the most experienced workers.

248. The complainants further indicate that the Government has forced public institutions, including state-owned enterprises, to introduce the performance-based wage system. A unilaterally drafted recommendation to this effect was issued. On 28 January 2016, the Steering Committee of Public Institutions finalized the proposal for the performance-based wage system for public institutions and on 1 February the Financial Services Commission announced the Measures to Promote Performance-Oriented Culture in Public Financial Institutions. On 22 April, President Park explained during the National Financial Strategy Meeting 2016 that the performance-based wage system should be extended to all 120 public institutions so that the public sector can lead the structural reform. She repeated this statement at the State Council session held on 10 May. The Steering Committee decided on 9 May 2016 that state-owned enterprises should introduce the performance-based wage system by the end of June and quasi-governmental institutions should do the same by the end of the year. The decision provided for financial incentives for speeding up the targeted reform of the wage system.

249. The complainants state that the implementation of the performance-based wage system with regard to the executives of public institutions started six years ago, and proved to be dysfunctional and unfair in the absence of objective assessment criteria. The forced generalization of this system in the public sector, without sufficient discussion between management and labour, would be similarly dysfunctional and unfair and may lead to a reduction in public services and pose threats to the people's safety. It is further alleged in the complaint that the forced introduction of the performance-based wage system has already resulted in prevailing manipulation of the laws and violation of autonomous negotiations between labour and management. Furthermore, since the President's statement on 25 April 2016, union leaders were confined and individual employees were coerced to consent to the new wage system.

250. The complainants finally allege that Government attempts to expand the performance-based wage system from public to private sector have caused a serious violation of autonomous bargaining between labour and management. They refer to the 2016 *Directions and Instructions on Wages and Collective Bargaining*, proclaimed by the Government on 23 March 2016. They allege that the Government pushed the content of the Directions by holding local labour–management meetings, forming expert support groups, and selecting core businesses that will be managed accordingly. The Directions indicated mainly that companies should move away from emphasis on seniority and instead base the wage system on skills and performance; the wage increase for the top 10 per cent of executives and employees should be delayed; meetings should be organized with local labour and management organizations to promote youth employment, and an expert support group should be formed to promote the Guidance on Fair Personnel Management among companies and provide general consulting services. It was also indicated that the main targets for the wage system reform are 74 core businesses and the main targets for the introduction of the wage peak system are 1,150 businesses, including 380 companies with more than, and 770 companies with fewer than 300 employees.

251. According to the complainants, the Government's next step was the announcement of the *Plan for the Guidance on Improving Undue or Unreasonable Collective Agreements* on 28 March 2016, following the *Guidelines for Correcting Undue or Unreasonable Collective Agreements* announced on 15 April 2015. The complainants allege that with this Plan, the

Government intervened in collective bargaining by taking position in favour of the revision and/or abolition of provisions of collective agreements requiring union consent for certain decisions on personnel and management matters, including change in a union official or member's job or position, disciplinary actions or business changes such as mergers and acquisitions. The Plan argues that such provisions are unreasonable as they give unions too broad an authority over human resources and management, making it harder for the employers to take managerial decisions quickly. The Plan also qualified as unlawful provisions that provide facilities such as telephone, electricity, water, heating and air conditioning or vehicles to incumbent and former union leaders or those acknowledging as working days the days the members of a negotiating committee spend in negotiations. According to the complainants, following a decision rendered at the National Labour Relations Commission, the Government is determined to issue correction orders in case companies fail to comply with the revision and correction guidance. Furthermore, in April 2016, local offices of the Ministry sent out official letters entitled "Recommendation for Autonomous Improvement of Collective Agreement" to all unions and companies. The letters indicated that the issues identified in the guidance must be corrected within 60 days as of the beginning of labour–management negotiations.

252. The complainants indicate that the Supreme Court of the Republic of Korea has confirmed the legality and the binding character of the collective agreement provisions that the Government labels unreasonable in a number of its past rulings. With regard to changing the job or position of a union member, the Supreme Court has ruled: "If the agreement provides that the employer shall obtain a prior consent or an approval of the labour union, or shall discuss with the union to reach an agreement before imposing a measure, then any measures taken without going through such process shall be in principle regarded as null and void". With regard to disciplinary action, the Court has held "If the employer's collective agreement stipulates that the employer shall reach an agreement with its union with regard to any measures or actions to be taken against an executive of the union, any disciplinary action taken without the consent of the union shall be in principle regarded as null and void". Lastly, with regard to collective agreement provisions limiting management prerogatives, the Supreme Court has held: "Even when a matter is part of the employer's management rights, labour and management may engage in collective bargaining at their discretion and conclude a collective agreement. The efficacy of such collective agreement is acknowledged unless it goes against compulsory laws or social order."

253. With regard to the question of incompatibility of the *Guidance on Improving Undue or Unreasonable Collective Agreements* with the principles of freedom of association and the right to collective bargaining, the complainants refer to the arguments presented in their submission in Case No. 3138 [see 380th Report, paras 355–357].

254. The complainants further describe a number of protest actions in 2015, undertaken by trade unions to express disagreement with what they call Government plans to promote regressive labour law reforms and the State reactions thereto. They indicate that on 3 January 2015, the KCTU central executive committee decided to conduct a general strike if the Government continued to push for the reforms unilaterally. A vote was held over eight days from 31 March to 8 April 2015. Some 84.35 per cent of voters – 54.92 per cent of the total members – voted in favour of the strike. On 13 April, the KCTU declared a general strike to be held on 24 April unless the following four demands were met: (i) the withdrawal of labour market reforms; (ii) the withdrawal of the reform of the public officials' pension system; (iii) increase of the minimum wage to 10,000 South Korean won (KRW) per hour; and (iv) amendment of the Labour Standards Act and the Trade Union and Labour Relations Adjustment Act (TULRAA) so that fundamental labour rights are guaranteed for all workers.

255. According to the complainants, as soon as the KCTU decision to go on strike was declared, the Korean Employers' Federation (KEF) made a statement dated 13 April 2015 that qualified the strike as illegal as its purpose was to oppose government policy. Moreover, the

Labour Minister Lee-Ki-kwon publicly stated that the declared strike was clearly illegal as striking in opposition to the amendments and systems or policies introduced by the Government is not justified. He further said that as the Minister in charge of industrial relations he will not allow any damage to be caused by the illegal strike. A prosecutor also announced that in case of strike, KCTU leaders and striking workers would be punished under the Penal Code and key figures would be held in custody for investigation.

256. After the strike, the KEF accused KCTU President Mr Han Sang-gyun of "obstruction of business" and the police summoned him on this charge. Besides, the police named him as the leader of an illegal action that occurred during a mass rally held on 16 April 2015 to demand information on the Sewol Ferry disaster. The KCTU had participated in the rally as part of its solidarity activities. Some media outlets also reported that Mr Han had participated in planning an allegedly illegal, violent demonstration. Mr Han requested a rescheduling of the investigation but the prosecution tried to obtain an arrest warrant, which the judge declined to grant. The second assistant prosecutor general of Seoul Central District criticized this judicial decision when he addressed the media. The prosecution's request for an arrest warrant was renewed and finally granted in June 2015.

257. On 14 November 2015, Mr Han held a press conference in front of the Korea Press Centre in Seoul where he expressed his opposition to the Government labour reforms. After the press conference he participated in the national workers' rally organized by the KCTU and the people's mass mobilization organized by various social movements. He subsequently sought sanctuary in the Jogyesa Buddhist Temple. The police finally arrested Mr Han on 10 December 2015, as soon as he stepped out of the temple.

258. Prior to the mass mobilization of 14 November, the national police placed Seoul Metropolitan, Gyeonggi Provincial and Incheon Metropolitan police agencies on the highest alert level; issued a "notice of prohibition" of assembly and demonstrations and announced that it will install bus barricades around the venue of the rally. On the day of the rally, the police mobilized some 20,000 officers from 248 squadrons, 19 water cannons, 679 buses, 580 capsaicin sprays and 102 devices for evidence collection. Bus barricades and water cannons were installed. When the participants marched down the street and were blocked by bus walls, the police used record levels of water and tear gas against them. Water cannons were used in direct or aimed jets, and people found it hard to open their eyes or breathe because of the prolonged tear gas attack. Dozens of people were injured by water cannons, including a farmer named Mr Baek Nam-gi, who went into a coma after being struck with a direct jet of water.

259. According to the complainants, the police did not make an apology about the excessive use of force, nor did it conduct an investigation or reprimand those in charge. Instead, they qualified the mass mobilization as a violent demonstration and proceeded to the investigation and arrest of the participants. About 1,200 police officers were mobilized across the country to investigate participation in the 14 November mass mobilization. On 6 December 2015, the police announced that 1,531 people were chosen as subjects of investigation, and legal action would be taken against 585 persons. In this process, 532 KCTU members were summoned in total: 476 as suspects and 12 as witnesses. Some 15 were cleared of suspicion. Among the summoned, 20 persons were held in custody and subsequently indicted.

260. On 5 January 2016, Mr Han was indicted under eight different charges including simple obstruction of traffic; aggravated obstruction of public duty; injuring police officers; aggravated destruction of public goods and violation of the Act on assembly and demonstrations. It was argued that Mr Han had led all the rallies held by the KCTU in 2015 as well as the mass rally of 14 November. On 4 July 2016, the Seoul Central District Court convicted Mr Han and sentenced him to five years imprisonment and a KRW500,000 fine. On 8 July Mr Han filed an appeal and on 11 July the prosecutors did the same, seeking a longer prison term against him. The complainants indicate that at the time of submission of

the complaint to the committee, Mr Han was detained in the Seoul Detention Centre pending his appeal. The committee notes further that an Opinion of the United Nations Working Group on Arbitrary Detention, transmitted by the complainants for the information of the committee, indicates that in a ruling issued on 13 December 2016, the Appellate Court upheld Mr Han's conviction for incitement to violence but dismissed the charge of "inflicting bodily injury by special obstruction of public duty" and reduced the sentence from five years to three years [see Opinion No. 22/2017 of the United Nations Working Group on Arbitrary Detention concerning Sang-gyun Han and Young-joo Lee, paras 43 and 49].

261. The complainants provide the names of 20 KCTU or affiliate unions' members and officials against whom a penal procedure was pending at the time of the communication under charges such as special obstruction of public duty injuring public officials, special destruction of public goods, special obstruction of public duty, obstruction of general traffic, failure to observe a dispersal order and harbouring a criminal. Among them, six persons were in custody while awaiting the outcome of their trials or appeals. This group included Mr Sang-gyun Han, President of the KCTU; Ms Tae-sun Bae, Executive Director of KCTU's Organization Department; Mr Sung-deok Cho, Vice-President of the Korean Public Service and Transport Workers Union (KPTU); Mr Hyun-dae Lee, Director of KCTU's Organization Department; Mr Jun-seon Park, Director of KCTU's Organization Department and Mr Jae-shik Lee, Chair of the KPTU Truck Sol Division, Gumi Local. They were respectively condemned to five, three, two, and one-and-a-half years, one year and ten months imprisonment. All charges were related to participation in the 14 November 2015 mass rally. Some were pending appeal at the time of communication.

262. The complainants further indicate that the following three union members and officials were also indicted in relation to the 14 November demonstration, but were released on bail and awaited the result of their trials at the time of the communication: Mr Jae-seung Byeon, member of the KPTU; Mr Jeong-uk Yang, Chair of the Emergency Committee of the Ulsan Nam-ku Branch of the Korean Government Employees' Union (KGEU) and Mr Ji-ho Yang, Chair of the KCTU Jeju regional branch.

263. Lastly, the complainants indicate that the following 11 union members and officials were convicted to imprisonment terms of between one-and-a-half years and four months on charges of aggravated obstruction of public duty, but all were released as the execution of their sentences was suspended: Mr Jae-geun Choi, member of the Korean Metal Workers' Union (KMWU); Mr Young-chul Choi, Member of the Korean Federation of Construction Industry Trade Unions (KFCITU); Mr Hyung-chang Jang, Department Executive Director of the KFCITU; Mr Young-hyun Jeong, General Secretary of the Korean Plant Construction Workers Union (KPCWU) Ulsan Branch; Mr Beom-jin Kang, member of the KFCITU; Mr Ki-hong Kim, member of the KFCITU and former Secretary of the KPCWU Ulsan Branch; Mr Kyung-do Kim, member of the KMWU; Mr Geum-ju Lee, member of the KMWU; Mr Nam-guk Lee, member of the KMWU; Mr Jeong-soo Nam, Executive Director of the KCTU's Education and Publications Department, and Mr Myung-hun Park; member of the KFCITU.

264. The complainants add that besides the procedures undertaken against the 20 abovementioned trade unionists, an arrest warrant for participation in the 14 November demonstration was issued against Ms Young-joo Lee, Secretary General of the KCTU. Ms Lee took refuge at the KCTU headquarters in Seoul as of December 2015 in order to avoid detention.

265. The complainants refer to various paragraphs of the *Digest of decisions and principles of the Freedom of Association Committee* in support of their views: the arrest and detention of trade union leaders for participation in peaceful trade union activities violates the principle of freedom of association; the purpose of the demonstrations referred to in the complaint was legitimate; the Government determined unilaterally that the April 2015 strike, which concerned the weakening of legal protection of labour, was illegal, while that determination

should have been made by an independent tribunal; the excessive use of force in the November 2015 mobilization was a clear violation of the right to freedom of association.

266. The complainants further refer to the report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic Korea (A/HRC/32/36/Add.2), emphasizing that he criticized the Government's efforts to prohibit public demonstrations and to arrest and prosecute trade unionists participating in them. An excerpt of the report is attached to the complaint.

B. The Government's reply

267. In a communication received on 29 September 2017, the Government transmits its observations with regard to the complainants' allegations. The Government introduces its observations by the general remark that it has made consistent efforts to elevate the fundamental rights of workers and has doubled its efforts to realize a society that respects labour since the inauguration of the new Administration in May 2017.

268. With regard to the allegations concerning unilateral labour law and policy reforms, the Government indicates that at the end of 2014, draft comprehensive measures for non-regular workers were drawn up and proposed to the ESDC as an agenda item for tripartite discussions, and an official discussion was requested. The Government's intention was not to announce a finalized policy regarding non-regular workers, but to devise a reasonable solution to improve the treatment of non-regular workers expeditiously via substantial tripartite discussions in the ESDC's Special Committee on Structural Reforms of the Labour Market. Since then, agreement has not been reached on the draft measures due to a difference of views among the tripartite members of the ESDC.

269. After the FKTU declared the breakdown of negotiations in the ESDC in January 2015, the Korean Government announced its position on the direction of labour market structural reforms on 9 April 2015, stating that it would do its job through legislation and budget allocation regarding matters on which tripartite consensus was built as a result of negotiations that took place over three months, starting in January 2015. These matters included promotion of youth employment, reduction of labour market duality, expansion of the social safety net, clarification of the range of ordinary wages, reduction of working hours, and a soft landing for the retirement age extension. The Government also said that regarding issues on which a consensus on the basic policy direction was reached but details remained to be settled, such as the amendment of laws on the protection of non-regular workers, discussion would continue with the relevant stakeholders and the tripartite partners. Finally, with regard to the issues on which the tripartite members showed clear differences, such as the process and standards (for example, government interpretation and guidelines) of revision of employment rules with a view to restructuring wage systems in relation to the extension of the retirement age to 60, the Government announced that it would gather diverse opinions from experts, labour and management before drawing up a detailed plan of action.

270. The Government further indicates that the guidelines on fair human resources management (referred to as the *Guidelines on Easing Regulations on Dismissal of Underperformers* by the complainants) are a manual of reference for businesses to help them induce performance-based human resources management, which provides a checklist for establishing an equitable human resources management system based on job competency and performance for the overall process of human resources management including hiring, appraisal, pay, education and training, relocation, and retirement management. As to the guidelines on employment rules (referred to as the *Guidelines on Disadvantageous Changes in Employment Rules* by the complainants) the Government indicates that they are a supplemented revision of the 2009 guidelines that served as a reference for the assessment of restructuring employment rules in relation to the follow-up measures, such as

reorganizing the wage system pursuant to the enforcement of the mandatory retirement age of 60 in 2016. However, as it noticed that both sets of guidelines on equitable human resources management and employment rules were made with neither an ample collection of opinions nor a consensus, and that they were a source of conflict between labour and management, blocking social dialogue, in September 2017 the new Government announced that it would abolish them.

271. With regard to the guidelines on wage/collective bargaining (referred to as the 2016 Directions and Instructions on Wages and Collective Bargaining by the complainants) the Government indicates that they are a reference distributed every year to regional labour and employment offices for labour inspectors, generally containing guidance on industrial relations and wage bargaining. Restructuring the wage system is a matter agreed upon through years of tripartite negotiations, and was incorporated into the guidelines not to force its adoption in the private sector, but with a promotional view.

272. With regard to the plan on the revision of (illegal or unreasonable) collective bargaining agreements (CBAs), the Government recalls that the ITUC, the KCTU, and the FKTU jointly submitted a complaint to the Committee, in reply to which the Government sent its observations in March 2016, and the Committee adopted a recommendation in November 2016. The Government expresses its position on the matter once again as follows. CBAs are signed autonomously between labour and management. However, as their prescriptive effects come into force once they are signed, their contents must not be in violation of mandatory provisions, such as the Constitution and related laws. Hence, when a CBA violates mandatory provisions or a third party's rights, it must be revised, and such a revision must be made by labour and management autonomously, in principle. When such a revision has not occurred autonomously and, if for example, the rights of any party of labour, management, or of jobseekers were unfairly violated, the authorities may order a correction in accordance with Section 31(3) of the TULRAA. Pursuant to this principle, in April 2016, the Government, following a decision of the Labour Relations Commission, issued an order of correction on clear violations of laws, such as preferential and special hiring treatment for the children of union members and provision of financial support to cover union dues and operating expenses. The Government determined that providing facilities to former and incumbent union officials is an unfair labour practice that infringes trade union independence, in violation of section 81(4) of the TULRAA. This stance of the Government is supported by many past court decisions. The Government however challenges the complainants' allegation that it has stipulated that the collective agreement provision that recognizes the days bargaining committee members engage in bargaining as workdays is illegal, and indicates that it has never made such a determination.

273. The Government further admits having provided a guidance for autonomous resolution of unreasonable (but not illegal) CBAs. The guidance stated that a consent of the trade union on matters relating to personnel and management could not be seen as a violation of mandatory provisions and so it may not be subject to a correction order, but such a requirement might hinder normal operation of business or possible job creation and so it might be better to be addressed autonomously. The Government further indicates that in consideration of the ILO's position that if a CBA is revised, it must be done by labour and management autonomously, the Government stopped its administrative guidance on unreasonable CBAs as of 31 May, 2017. Furthermore, it emphasizes that it will refrain from intervening in irrational CBAs in respect of labour–management agreements, and will adhere to the principle of autonomous settlement.

274. With regard to the promotion of a performance-based wage system, the Government indicates that on 28 January 2016, it announced "recommendation for a performance-based wage system in public institutions" as part of a solution to reconstruct the wage system to enhance productivity and efficiency of public institutions. This recommendation expanded the coverage of the performance-based wage system from managers to staff and put in place

incentives and penalties with a view to expanding the introduction of the system. The recommendation set up basic principles that aimed at ensuring the fairness of performance assessments, namely increasing quantitative indicators when designing assessment indicators; staff participation in setting the indicators; outside experts' participation in assessment; and a procedure for appeal concerning the results of an assessment.

275. The Government further indicates that in June 2016, all 120 public institutions and quasi-government organizations introduced the expanded performance-based wage system. However, some institutions did so without an agreement between labour and management, which caused labour–management conflicts, including legal disputes. The Government, in order to expeditiously resolve such labour–management conflicts derived in the process of expanding the system, devised "follow-up measures related to the performance-based wage system at public institutions" on 16 June 2017. The measures included: (1) removal of some elements in the original recommendation, such as the deadline for introduction of the performance pay system and the minimum extent to which the performance pay system should be introduced; (2) abolition of penalties such as freezing personnel expenses in cases of non-compliance with the guidelines and failure to adopt the performance pay system; and (3) deletion of whether performance pay was introduced or not as an indicator in the management assessment system for public institutions. The Government states that as a result of the introduction of follow-up measures, public institutions are now able to restructure their wage system autonomously based on labour–management agreement and the institutions that introduced the system without labour–management agreements are resolving conflicts by returning to their original wage system and dropping lawsuits.

276. With regard to the context of the protest actions referred to in the complaint, the Government indicates that after the FKTU's declaration of a de facto breakdown of the grand tripartite compromise in January 2015 and the Government announcement of its position on the direction of labour market structural reforms in April 2015, the complainants proclaimed a general strike in opposition to the Government's proposal of a discussion. In reply to the allegation that the Government judged this strike illegal before it even took place, it is indicated that the Government has a responsibility to guide both labour and management to abide by the law in order to prevent illegal acts. The former Labour Minister's statement on the issue of legitimacy of the general strike in April 2015 was to inform the relevant parties of the possibility that their actions might be illegal and to ask for compliance with the existing position of the Supreme Court. However, considering the labour union's concern that the government's prior guidance would affect workers' rights to collective action, the new Government will focus on the prevention of labour–management conflicts and resolution of disputes through active engagement such as on-site guidance and inspection at workplaces and support for labour management dialogue.

277. Regarding the measures taken against Mr Han Sang-gyun, the President of the KCTU and others on 29 April 2015, the Government indicates that the KEF accused Mr Han and another union official of obstruction of business in relation to the general strike on 24 April. Mr Han was prosecuted for a number of offences committed during a total of 11 violent assemblies from April to November 2015, which included one count of inflicting bodily injury by special obstruction of public duty, three counts of special obstruction of public duty, two counts of special obstruction of official goods, seven counts of general obstruction of traffic, five counts of non-compliance with the order to disperse, and four counts of participation in assemblies conducted in prohibited places. In particular, during the rally in May 2015, Mr Han assaulted police officers together with other participants in the rally. The police decided that an investigation was needed and requested Mr Han's attendance, which he refused. Therefore, an arrest warrant was requested and after the deliberations of the Court, the gravity of the facts was acknowledged and the arrest warrant was issued. However, after the warrant was issued, Mr Han took refuge in Jogye Temple where he planned and organized a number of illegal and violent assemblies, including the one that took place on 14 November 2015.

278. During the 14 November rally, a number of participants illegally occupied all of the major roads in downtown Seoul, such as Sejong-daero and Anguk-dong Rotary in both directions and assaulted police officers who were trying to stop them, using iron pipes and lumber sticks. They also engaged in violent acts such as pulling down the bus barricade with ropes, smashing buses with hammers and iron pipes, and trying to set fire to police buses, which caused serious damage, leaving 108 police officers injured and 43 police buses damaged. To cope with these violent acts, the police legitimately enforced the law by blocking the illegal march and arresting people who committed assaults, in order to keep public order. In this process, the police used minimum sprinkler trucks (water mixed with liquid tear gas) only when necessary and strictly in accordance with requirements and procedures under the Constitution and other legislations of the Republic of Korea. Moreover, the police response was ruled legitimate by the Korean court. The union officials, including Mr Han, were put on trial for organizing and leading violations of the law during the rally.

279. With regard to the police intervention in the 14 November 2015 rally and the death of a demonstrator referred to by the complainant, the Government further indicates that despite the police's efforts to fulfil their duties in the best way possible, Mr Baek Nam-gi, a farmer, was seriously injured and died on 25 September 2016. An internal inspection was conducted within the police, and the Commissioner-General, Lee Cheol-seong, officially apologized regarding the death of Mr Baek, and as of August 2017, the Commissioner-General was striving to get in contact with the bereaved family to extend his apology in person. Regarding the death of Mr Baek, a report was filed with the prosecution, which is currently being investigated, and necessary measures will be taken according to the results of the investigation. However, the Government's view is that the unfortunate demise of an ordinary citizen is not in the purview of the ILO.

280. The Government recalls that paragraph 133 of the *Digest of Decisions and Principles of the CFA* specifies that workers should enjoy the right to "peaceful" demonstrations to defend their "occupational interests", but it says nothing about illegal or violent protests and adds that anyone who commits a crime is subject to some corresponding punishment, as this is a basic element of rule of law. The Government guarantees unions the lawful and peaceful exercise of their protected rights to the maximum extent possible. The Government emphasizes that the indictment was clearly not an attempt to restrict union activities, as Mr Han Sang-Kyun and other union officials were indicted because they assaulted police officers and planned illegal action which led to unlawful acts of violence. It further indicates that the Supreme Court sentenced Mr Han to three years in prison and a KRW500,000 (approximately USD450) fine on 31 May 2017, which was not for his labour activities but for the violations of the law currently in force. Concerning the outcome of the trials of 20 other union officials mentioned by the complainants, the Government provides the following table:

No.	Name	Affiliation	Date of arrest	Court decision	Confirmation
1	Han Sang-gyun	KCTU	13 Dec. 2015	13 Dec. 2016, second trial	31 May 2017
2	Bae	KCTU	15 Jan. 2016	(3-year prison term, KRW500,000 fine)	31 May 2017
3	Jo	Korean Public Service and Transport Workers Union (KPTU)	14 Jan. 2016	13 Dec. 2016, second trial	18 July 2017
4	Lee	KCTU	19 Feb. 2016	(18-month prison term, KRW300,000 fine)	5 Jan. 2017
5	Park	KCTU	24 Dec. 2015	13 Dec. 2016, second trial	18 Aug. 2017
6	Lee	KPTU	25 Dec. 2015	(18-month prison term suspended for 2 years)	29 Jul. 2016
7	Byeon	KPTU	21 Dec. 2015	13 Dec. 2016, second trial	4 Nov. 2016

No.	Name	Affiliation	Date of arrest	Court decision	Confirmation
8	Yang	Korean Government Employees' Union (KGEU)	18 Nov. 2015	(18-month prison term, KRW300,000 fine)	3 June 2016
9	Yang	KCTU	19 Jan. 2016	14 Oct. 2016, first trial	7 Apr. 2017
10	Choi	Korean Metal Workers' Union (KMWU)	9 Jan. 2016	(1-year prison term)	30 Dec. 2016
11	Choi	Korean Federation of Construction Industry Trade Unions (KFCITU)	24 Dec. 2015	21 Jul. 2016, second trial	23 June 2016
12	Jang	KFCITU	19 Dec. 2015	(10-month prison term)	2 Sep. 2016
13	Jeong	Korean Plant Construction Workers Union (KPCWU)	21 Jan. 2016	26 May 2016, first trial	3 Sep. 2016
14	Gang	KFCITU	18 Nov. 2015	(1-year prison term suspended for 2 years)	4 June 2016
15	Kim	KFCITU	31 Dec. 2015	28 Jan. 2016, first trial	23 June 2016
16	Kim	KMWU	20 Nov. 2015	(KRW6 million fine)	9 July 2016
17	Lee	KMWU	8 Jan. 2016	24 Aug. 2016, first trial	24 Dec. 2016
18	Lee	KMWU	7 Dec. 2015	(1-year prison term suspended for 2 years)	4 June 2016
19	Nam	KCTU	7 Jan. 2016	30 Mar. 2016, first trial	19 Aug. 2016
20	Park	KFCITU	18 Nov. 2015	(1-year prison term suspended for 2 years)	21 July 2016
21	Lee	KTUC	Dec. 2015: Arrest warrant issued		

281. The Government further provides a few indications with regard to the report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association that the complainants have partly quoted in support of their allegations. The Government states that the Special Rapporteur has reviewed the overall situation of the rights to freedom of assembly and association and reported his opinions in this regard. However, in the Government's view, the matters covered by his report are beyond the scope of the ILO Committee on Freedom of Association (CFA), directly related to the protection of fundamental labour rights. The Government expresses the view that, in accordance with paragraph 135 of the *Digest of Decisions and Principles of the CFA,* assemblies are only protected by the principle of freedom of association when they are organized by a trade union or when they can be considered a legitimate union activity corresponding to Article 3 of ILO Convention No. 87. Hence, the complainants' demand for the deliberation of the ILO Committee on Freedom of Association on the report of the UN Special Rapporteur is outside the purview of the ILO.

282. With regard to the situation of freedom of peaceful assembly and association in the Republic of Korea, the Government indicates that it guarantees all individuals the right to assembly and association pursuant to the Korean Constitution and international human rights standards. In particular, the freedom of assembly is stipulated in the Assembly and Demonstration Act in detail, according to which anyone who wishes to convene an assembly may do so after submitting the summary of the assembly to the police. The percentage of assemblies that were not authorized was only 0.24 per cent in 2011 and 0.15 per cent in 2015. These low rates illustrate that allegations that the Government is not ensuring the freedom of assembly are groundless. In addition, even for unreported assemblies, only when illegal acts such as violence occur and clearly and directly threaten public peace and order, can they be subject to orders to disperse, according to the precedents of the Supreme Court. In the period between the end of 2016 and April 2017, during the candlelight vigils held

nationwide in the Republic of Korea, the police responded pursuant to the law. More than 1 million people participated in a rally, but not a single person was arrested, nor did any violence occur between participants. This can be easily verified from numerous media sources. On the other hand, in the 14 November 2015 assembly, the most violent rally of all of those involving Mr Han, approximately 68,000 participants did not comply with the police's disperse order that was repeated 15 times; they assaulted police officers with iron pipes and lumber sticks and pulled down police buses with ropes. To respond to such an illegal violent rally, the police mobilized some 20,000 officers, 19 water cannons, and 580 pepper spray devices. This rally alone left 108 police officers injured with two officers seriously injured, 43 police buses damaged, and 138 devices damaged, which made it one of the most violent rallies in recent years, also recognized as such in a court ruling. The Government finally states that the exercise of rights stipulated by international human rights norms can be restricted on the grounds of national security, public order, or for the protection of the rights of others, and violent rallies are beyond the scope of Article 21 of the International Covenant on Civil and Political Rights that protects the right to peaceful assembly.

283. The Government concludes its observations by indicating that the complainants' allegations with regard to the "unilaterally enforced labour reforms" are exaggerated as the Government had only proposed a guide for tripartite discussions with a view to resolving the crisis brought about as a result of labour market polarization and the extension of the retirement age. Those proposals however, are now either suspended in implementation or are being reviewed from a different perspective as the Government accepted diverse opinions expressed by stakeholders. The Government further reiterates that the legal measures taken against the President of the KCTU, Mr Han Sang-gyun, and other union members were by no means related to their trade union activities, but were a response to violation of the laws in force in the course of illegal and violent rallies.

C. The Committee's conclusions

284. *The Committee notes that this case concerns allegations of unilateral adoption of government guidelines affecting the autonomous nature of collective bargaining without full consultation with social partners; the qualification of a strike as illegal with regard to its objective of opposing government policy; criminal charges and prosecution of a union leader in relation to the organization of a strike and participation in demonstrations; use of excessive police force against peaceful protestors resulting in injury and arrest and prosecution of union members and officials for participation in demonstrations.*

Government Guidelines and the autonomous nature of collective bargaining

285. *The Committee notes the allegations related to the process of announcement, the content and the potential impact of the Guidelines on Easing Regulations on Dismissal of Underperformers and the Guidelines on Disadvantageous Changes in Employment Rules. According to the complainants, the Guidelines cover highly disputed policy issues on which no prior tripartite agreement could be reached. The complainants affirm that the Government had submitted draft legislation to Parliament that failed to pass due to intensive opposition and protest on the part of trade unions. However, subsequently, without prior tripartite consultations, the complainants allege that the Government quickly drew up and proclaimed guidelines recommending the revision of the wage system and easing of dismissals through modification of workplace rules and collective agreements. The complainants emphasize that although the Guidelines are not legally binding, they are likely to have a broad impact on the labour market as the Ministry of Labour and Employment uses them to advise employers.*

286. *The Committee notes the complainants' concern that the Dismissal Guidelines undermine negotiations between labour and management and cause imbalances in the negotiation power between the parties through explicit preference shown for integration of changes in collective agreements and employment rules that make dismissals easier and hence disadvantageous to workers. The complainants affirm that despite their being in violation of Korean law as well as ILO standards on freedom of association and the right to collective bargaining, the Dismissal Guidelines will certainly be used against trade unions in bargaining. The Committee further notes the Government's observations that what the complainant refers to as Dismissal Guidelines are guidelines on fair human resources management, providing businesses with a checklist for establishing an equitable management of human resources based on competence and performance.*

287. *With regard to the Guidelines on Disadvantageous Changes in Employment Rules, the Committee notes the allegation that they allow companies that are unlikely to receive the consent of the majority of their workers to change the workplace rules with a view to the modification of the wage system. According to the complainants, the Guidelines firmly recommend that workers approaching the retirement age take a wage cut in order to favour youth employment, and under a new Government plan, authorities will offer incentives to a number of businesses to adopt the wage peak system. The complainants further consider that by firmly recommending that workers accept such modifications, the Government interferes in wage negotiations. According to the complainants, this guidance is also likely to be used to undermine wage schedules already negotiated between unions and employers. The Committee notes that the Government refers to the same guidelines as Guidelines on employment rules and states that they are a reference for the assessment of restructuring of employment rules, in particular with regard to measures such as the increase of the retirement age to 60 in 2016.*

288. *With regard to the impact of these Guidelines on collective bargaining and whether it amounts to Government interference in collective bargaining, the Committee recalls that where intervention by the public authorities is essentially for the purpose of ensuring that the negotiating parties subordinate their interests to the national economic policy pursued by the Government, irrespective of whether they agree with that policy or not, this is not compatible with the generally accepted principles that workers' and employers' organizations should enjoy the right to freely organize their activities and to formulate their programmes, that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and that the law of the land should not be such as to impair or be so applied as to impair the enjoyment of such right [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1005]. While it may be necessary to alert the parties to compelling considerations of national economic interest, this requires, first of all, that the objectives to be recognized as being in the general interest should have been widely discussed by all parties on a national scale.*

289. *The Committee notes that according to the complainants, the proclamation of the Guidelines on 22 January 2016 was not preceded by tripartite discussions and observes that such a unilateral measure, even if not binding, could appear to be aimed at influencing the process and outcome of collective bargaining and thus alter its free and voluntary nature. The Committee further notes, however, the Government's indication that, noting that both guidelines were made without an ample collection of opinions or a consensus and had become the source of conflicts between labour and management and obstructed social dialogue, the new administration announced in September 2017 its intention to abolish them. The Committee welcomes this decision and expresses the firm hope that any future guidelines will be drawn up in full consultation with the representative workers' and employers' organizations concerned.*

290. *With regard to the generalization of the performance-based wage system in public institutions including state-owned enterprises, the Committee notes the allegation that the Government has issued a unilaterally drafted recommendation to this effect and that financial incentives were offered for speeding up the related measures. The complainants further allege that the Government measures to introduce the new wage system have already resulted in violation of autonomous negotiations between labour and management. The Committee further notes the Government's reply to the allegations, confirming that some institutions introduced the new wage system without an agreement between labour and management, which entailed conflicts, including legal disputes. The Committee notes that to remedy this situation the Government has taken follow-up measures in June 2017, removing the incentives and penalties provided in the January 2016 recommendation and that following these measures, the institutions that had introduced the new wage system without labour–management agreement are resolving conflicts by returning to their original wage system. The Committee welcomes the Government's removal of intrusive penalties and incentives with a view to allowing the parties to restructure their wage systems autonomously on the basis of freely reached agreements between labour and management, and notes with satisfaction that the follow-up measures have already produced beneficial effects in terms of resolution of conflicts that had arisen from the January 2016 Recommendation.*

291. *The Committee further notes the complainants' indication that the Government attempted to expand the performance-based wage system to the private sector, in particular through the proclamation of the Directions and Instructions on Wages and Collective bargaining announced on 23 March 2016, that provide that companies should be encouraged to reform the wage system based on skill and performance. Welcoming the Government's observation that restructuring the wage system has been agreed upon through years of tripartite negotiations and was incorporated in the guidelines only with a promotional view, the Committee recalls that wages are a basic component of terms and conditions of employment which might be subject to collective bargaining and expects that the Government will ensure the autonomy of the parties in the collective bargaining process.*

292. *The Committee notes with concern the allegation that since former President Park's statement on 25 April 2016, union leaders were confined and individual employees coerced to consent to the new wage system. It notes, however, that the complainants do not provide any specific details as to the identity of the workers and union leaders that were allegedly confined or coerced, neither do they specify in which context such acts took place, whether it was in the framework of consultations or collective bargaining or in another context. In view of lack of further detail in this regard, the Committee is only in a position to recall that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest****, op. cit., para. 44] and will not pursue the examination of this allegation.*

293. *With regard to the Government measures related to the correction of the so-called undue or unreasonable collective agreements, the Committee notes that the Government rejects the complainants' allegation that it has qualified as unlawful the collective agreement provisions that recognize the days bargaining committee members engage in bargaining as workdays and indicates that it has never made such determination. It further notes the Government's indication that it has stopped its administrative guidance on unreasonable CBAs as of 31 May 2017 in consideration of the ILO's position that revision of CBAs must be done by labour and management autonomously. Noting that the allegations and arguments presented to support them are closely related to those submitted in another case concerning the Republic of Korea [see 380th Report, Case No. 3138, paras 349–372] and recalling that in that case, it had regretted that the Government had apparently offered incentives to achieve changes in collective agreements in areas that should rest within the autonomy of the bargaining partners [see 380th Report, para. 371], the Committee*

welcomes the Government's decision to stop its guidance directed at the autonomous revision of the so-called unreasonable CBAs.

Interference in the exercise of strike and demonstration

294. *With regard to the general strike held on 14 April 2015, the Committee notes that allegedly, both the Korean Federation of Employers and the Labour Minister announced the strike as illegal on the basis that its purpose was to object to Government policies. The Committee recalls that purely political strikes do not fall within the scope of freedom of association. It notes the Government's observation that the former Minister's statement on the legitimacy of the general strike was made with a view to inform the parties that the action might be illegal and to request compliance with the relevant position of the Supreme Court. The Committee notes however the Government's statement in its latest communication that in view of the labour unions' concern that this type of "prior guidance" would affect the workers' right to collective action, the new Government will focus on the prevention of labour–management conflicts. In this respect the Committee recalls once again that the responsibility for declaring a strike illegal should not lie with the Government, but with an independent and impartial body [see 378th Report, Case No. 3032, para. 392] and that 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 [see* ***Digest****, op. cit., para. 527]. Noting with interest the new Government's sensitivity to the concerns of the workers' organizations with regard to the eventual impact of official statements on the legitimacy of strikes on their right to collective action and its increased focus on the prevention of labour conflicts, the Committee trusts that the Government will take the necessary measures to ensure that the right of workers to strike in relation to social and economic policies that affect their interests is duly respected.*

295. *As regards the allegation, confirmed by the Government, that after the strike, the KEF accused Mr Han, the President of the KCTU, of obstruction of business and that the police summoned him on this charge, the Committee refers to its recommendation in case No. 1865 concerning the Republic of Korea.*

296. *The Committee notes the allegations that the police had issued a notice of prohibition of assembly and demonstration prior to the mass mobilization of 14 November 2015 and that during that demonstration it used record levels of water and tear gas against demonstrators and that dozens of persons were injured by water cannons. The Committee also notes that in response to these allegations, the Government states that a number of participants in the 14 November rally blocked all major roads in downtown Seoul and engaged in violent acts that left 108 police officers injured and 43 police buses damaged. According to the Government the police intervention for blocking the illegal march and arresting people committing assaults was legitimate law enforcement with a view to the protection of public order. Sprinkler trucks were used only when necessary and strictly in accordance with constitutional and legal requirements and procedures and the police response was ruled legitimate in the Constitutional Court.*

297. *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, which are applicable to all. Workers and their organizations, like other persons or organized collectives, shall respect the law of the land. The Committee further recalls that workers should enjoy the right to peaceful demonstration to defend their occupational interests and that the authorities should resort to the use of force only in situations where law and order is seriously threatened and that the intervention*

*of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace [see **Digest**, op. cit., paras 133 and 140]. The Committee regrets the allegations of the use of force by both the demonstrators and the police. It further notes the Government's indication that an internal inspection was conducted within the police with regard to the death of a demonstrator, who passed away from injuries due to police intervention; that the Commissioner-General officially apologized regarding this death and an investigation is being carried out by the prosecution; necessary measures will be taken according to the outcome of the investigation. The Committee trusts that should the result of the investigation identify shortcomings in the management of the demonstration in terms of the principles referred to above, the Government will take all necessary measures so that victims of excessive use of force have access to adequate means of redress, and that, in the future, the interventions of forces of order are conducted in full respect of principles of proportionality and accountability. The Committee requests the Government to keep it informed of the outcome of the investigation and on any measures subsequently taken.*

Arrest and detention of trade union members and officials

298. *The Committee further notes the allegation that following the 14 November demonstration, the police began a sweeping investigation process against demonstrators. The complainants allege that, in this process, 532 KCTU members were summoned, of which 20 persons were arrested and subsequently indicted. In particular, with regard to Mr Han, the Committee notes that as the complainants indicate, he was condemned to five years imprisonment and a KRW500,000 fine in the court of first instance, and finally, as the Government indicates, on 31 May 2017 the Supreme Court upheld the reduced sentence of the Appellate Court condemning him to three years in jail along with the fine and he is currently serving this sentence.*

299. *The Committee notes that all 20 indicted KCTU members were arrested and kept in detention for shorter or longer periods. In view of the information submitted by the Government, the Committee notes that six KCTU members and officials (including Mr Han) had their prison sentences ranging from between three years and ten months confirmed; 13 were condemned to various terms of imprisonment of between 18 and four months, but the execution of their sentences was suspended for two to three years and one was condemned to pay a fine. According to the information submitted by the Government all these sentences are now confirmed. The Committee trusts that the 13 persons whose prison sentences were suspended and the person who was sentenced to pay a fine are now free. However, the Government does not indicate the status of the five unionists – other than Mr Han – who were condemned to prison terms without suspended sentences. The Committee hence requests the Government to indicate whether Ms Tae-sun Bae and Messrs Sung-deok Cho, Hyun-dae Lee, Jun-seon Park and Jae-shik Lee are released from prison.*

300. *The Committee recalls that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike, public meetings or processions [see 346th Report, Case No. 2323, para. 1122] and that in cases involving the arrest, detention or sentencing of trade union officials, individuals have the right to be presumed innocent until found guilty. In the case under examination, Mr Han was arrested, charged and condemned for organization of and participation in a number of trade union protests and public meetings in 2015 including the Sewol Ferry protest on 16 April, 1 May Assembly and the 14 November protest. All the other trade unionists were arrested in relation to their participation in the 14 November protest that related to disputed labour reform measures. The Committee notes the Government's statement that the*

assemblies that these unionists organized or participated in were illegal and violent. However, the Committee also observes that the Seoul Appeal Court, dismissed Mr Han's charge of "special obstruction of public duty injuring public officials" and reduced his sentence from five to three years. It further notes that in accordance with the details of charges submitted by the complainants, only two unionists – Ms Tae-sun Bae and Mr Sung-deok Cho – were initially charged with "special obstruction of public duty injuring public officials" which implies violent action during the demonstrations, and both of them had their sentences reduced in appeal, although it is not clear whether this reduction was due to the dismissal of charges of violent action. Other charges brought against the unionists include mainly obstruction of traffic, obstruction of public duty and failure to observe dispersal order. In these circumstances, the Committee considers that it does not have sufficient information available to it to conclude that the convicted trade unionists were directly responsible for violence during the demonstrations, consequently forfeiting their right to freedom of assembly. As the Committee understands that all the sentences are now confirmed, it requests the Government take any measures in its power for the release of Mr Han and all other trade unionists, if any, still in detention for the organization of the 14 November 2015 demonstration or peaceful participation therein and to keep it informed of the measures taken. It further requests the Government to provide detailed information on the charges for which the arrest warrant against Ms Young-joo Lee has been issued.

The Committee's recommendations

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

(a) Welcoming the decision of the new Korean Government to abolish the Guidelines released on 22 January 2016, the Committee expresses its firm hope that any future guidelines will be drawn up in full consultation with the representative workers' and employers' organizations concerned.

(b) Welcoming the Government's observation that restructuring the wage system has been agreed upon through years of tripartite negotiations and was incorporated in the guidelines only with a promotional view, the Committee recalls that wages are a basic component of terms and conditions of employment which might be subject to collective bargaining and expects that the Government will ensure the autonomy of the parties in the collective bargaining process in the private sector.

(c) The Committee trusts that should the prosecution's investigation of a death as a result of police intervention identify shortcomings in the management of the 14 November 2015 demonstration in terms of the principles referred to in its conclusions, the Government will take all the necessary measures so that victims of excessive use of force have access to adequate means of redress, and that in the future the interventions of forces of order are conducted in full respect of principles of proportionality and accountability. The Committee requests the Government to keep it informed of the outcome of the investigation and any measures subsequently taken.

(d) The Committee requests the Government to take any measures in its power for the release of Mr Han and all other trade unionists, if any, still in detention for the organization of the 14 November 2015 demonstration or peaceful participation therein and to keep it informed of the measures taken. It further requests the Government to provide detailed information on the charges for which the arrest warrant against Ms Young-joo Lee has been issued.

CASE NO. 3167

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

Complaint against the Government of El Salvador presented by the Union of Electrical Sector Workers (STSEL)

Allegations: The complainant alleges harassment and interference, establishment of a parallel union, loss of ownership of a collective agreement, refusal of leave and dismissal of a trade union activist

302. The complaint is contained in a communication of 3 August 2015 from the Union of Electrical Sector Workers (STSEL).

303. The Government sent its observations in a communication dated 1 November 2016.

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

A. The complainant's allegations

305. In its communication of 3 August 2015, the complainant alleges that STSEL was the victim of acts of interference by the President of the Río Lempa Hydroelectric Executive Commission ("the Commission"), a public group acting in that sector and covering various firms. The complainant explains that the official in question took up his post in June 2013 and that STSEL openly expressed its opposition to his appointment. The complainant states that the said person had tried to be elected as Secretary-General of STSEL, but that he had been refused the position, as he did not fulfil the legal requirements and acted as an employer's representative and trusted employee in one of the Commission's firms (La Geo, "firm A"), as project coordinator. According to the complainant, the fact that he did not manage to obtain the union position, as a result of the majority of members rejecting him at a general assembly, led to him making threats towards the union and guaranteeing that he would not rest until the organization was destroyed.

306. The complainant alleges that the President of the Commission sponsored a group of STSEL members and all the members of an STSEL section governing board to join forces with him in attacking the union. It states that STSEL reacted to this attack by expelling the members that had joined forces with the President and that, faced with their expulsion, they obtained further support from the President of the Commission, to the effect that he used them to

establish a parallel union based in firm A, known as the Union of Electrical Industry and Related Activities Workers of El Salvador (STESEC). The complainant states that membership of STESEC was obtained by coercing the STSEL members to withdraw from that union and become members of the new union, by offering the managers wage increases, if they joined up, as well as jobs for the children of those who became members. According to the complainant, the President of the Commission made a personal appeal for all middle- and high-ranking members, and managers of firm A and of the Commission, to join the STESEC, a step which those staff members actually took. Referring to membership of the union, the President of the Commission stated publicly that "members were either with him or against him"; for that reason, the employees and managers became members of STESEC out of fear. As regards the above, the complainant indicates that it filed an application for protection with the Constitutional Chamber of the Supreme Court of Justice, dated 21 October 2014, but that ten months after the application was filed nothing had been forthcoming. The complainant also informs that on 14 November 2014, it submitted a request to the Second San Salvador Labour Court, for STESEC to be legally dissolved owing to the acts of coercion against the STSEL members in firm A, committed together with the managers, although no final decision had as yet been taken on the application. It indicates that it has filed a further application with the Fourth Labour Court, owing to acts of coercion committed in the Commission by STESEC, although that judicial authority has not yet taken a final decision either.

307. Furthermore, the complainant states that while firm A of the Commission refuses to grant union leave to union leaders of various branches of STSEL to perform their union duties, it grants unrestricted leave to STESEC union leaders to carry out their activities, and provides them with appropriate food and transport. The complainant indicates that such conduct is also carried out by Commission officials who favour STESEC's union activities and restrict union leave for STSEL.

308. The complainant also states that on 15 May 2015, firm A dismissed Mr Julio Cesar Avilés Oliva, Secretary-General of STSEL's branch in firm A, for taking union leave, despite the fact that the Director-General of Labour of the Ministry of Labour had issued a ruling of 31 October 2014 to the effect that STSEL union leaders could benefit from union leave on the basis of the collective labour agreement. In addition, STSEL considers that, in accordance with the labour laws, a union leader cannot be dismissed or be subject to disciplinary sanctions without the competent authority having previously proved that a specific reason exists; in the case of Mr Avilés, that prior requirement had not been satisfied but he had been dismissed arbitrarily by the employer.

309. The complainant also denounces the fact that the President of the Commission authorized lawyers from its legal body to provide advice on the disputed ownership of the collective agreements concluded by STSEL with various Commission bodies, to the effect that the Head of the National Department of Social Organizations informed STSEL that it had transferred ownership, to STESEC, of the collective labour agreement with firm A (by a decision of 6 October 2014), and of the collective agreement with another firm (firm B) and with the Commission itself (in both cases by a decision of 4 May 2015). The complainant informs that it was not guaranteed the right to a hearing and due process, and that although it had informed the head of department in question that STESEC had gained union members from the said firms with the sponsorship of the President of the Commission, and that it had also taken legal action in that regard, the case was decided in favour of the employers' union, STESEC.

310. The complainant states that it reported these facts to the Minister of Labour and that, despite the Minister holding one meeting with the President of the Commission, the President continued with the attacks mentioned, to the extent that STSEL was deprived of the collective labour agreements of which it was the owner. The complainant states that the Minister also failed to intervene with the Head of the National Department of Social

Organizations for the purposes of carrying out an investigation of how STESEC gained the largest number of members. According to the complainant, the Minister's failure to act led to further attacks against STSEL's right to freedom of association.

311. Finally, the complainant alleges that it requested the Labour Inspectorate-General to conduct inspections in relation to the abovementioned anti-union practices and that the inspectorate noted the instances of coercion reported.

B. The Government's response

312. In its communication of 1 November 2016, the Government provides a response to the allegations made by the complainant, partly based on the information received from firm A (attached to the response). As regards the allegation of interference by the President of the Commission and his role in creating a parallel union (STESEC), the Government indicates that the President was appointed to his position in June 2014, for a four-year period. Referring to the registers held by the Ministry of Labour and Social Welfare, the Government indicates that only two unions are in operation in the Commission, i.e. STSEL and STESEC. The first was established on 24 August 1996 and the second on 1 May 2012, i.e. sufficiently in advance of the President's appointment. At the same time, it states that STSEL was already unhappy with the appointment of the official in question.

313. The Government states that the Commission is an official state autonomous public service institution, and that firm A is a public firm which belongs to the Commission, and that, in accordance with the individual labour agreement of the Secretary-General, it may be noted that she is an employee of firm A. From the above, the Government states that the facts alleged in the complaint by STSEL took place in firm A, whose legal representative, from 13 June 2014 to date, was not the President of the Commission but another person. In other words, the majority of the facts alleged by STSEL occurred in firm A, although the Commission managed the relevant information so as to examine in depth the facts relating to the representative.

314. As regards the procedure for changing ownership of the collective labour agreement concluded between STSEL and the Commission in favour of STESEC, the Government indicates that, pursuant to article 270 of the Labour Code, when comparing the updated payroll of STESEC members with the list of payments presented by the Commission, the National Department of Social Organizations of the Ministry of Labour and Social Welfare determined that STESEC had exceeded the required minimum percentage set by article 270 of the Labour Code. As regards firm A, the Government states that on 6 October 2014, the National Department of Social Organizations declared that STESEC was the owner of the collective labour agreement.

315. The Government further presents statistics concerning membership of the two sectoral unions (STSEL and STESEC), by means of which it provides proof of and justification for STSEL's loss of union ownership, owing to its smaller number of members, and highlights the obligation of the employer, firm A, to conclude the collective agreement with the union that represents the majority of workers. Based on the above, on 1 November 2015, that firm and STESEC finalized a new collective labour agreement which repealed the previous agreement, thereby demonstrating, according to the Government, a willingness to engage in dialogue by both parties in the conclusion of the new collective agreement.

316. With respect to the allegations that union leave was refused for trade union leaders of various branches of STSEL, the Government states that paragraph 24 of the new collective agreement recognizes the right of the union for its leaders to have union leave, but such leave is partial and not permanent:

> One member of the Section Governing Board for firm [A] of the Union and one member of the General Governing Board shall have ten (10) days of leave each per calendar month with full pay for the period during which he/she performs the duties for which he/she was elected, in order to carry out those necessary and essential duties in the exercise of his/her functions, with no obligation other than to report on a daily basis to the firm's premises, so as to provide assistance and verify that the work is carried out in an efficient and smooth manner, ensuring respect and consideration between coordinators and subordinates. The remaining members of the Section Governing Board for firm [A] and General Governing Board shall have six (6) days' leave per calendar month with full pay; they shall report to their place of work in the same manner; and time shall not be accumulated in subsequent months.

317. The Government further considers that the minority union also has the right to union leave, but on a partial basis and not full time. For the Government, the fact that the STSEL Secretary-General considers that she has the right to 100 per cent working time as a right granted by trade union freedoms is solely the result of a personal decision to grant herself the exclusive privilege not to work, contrary to the provisions of the new collective agreement in force. In that regard, it provides a list of 30 notes sent by the firm's human resources administrative authority, in which it requests STSEL's Secretary-General to report for work, something she has not as yet done.

318. As to the dismissal of Mr Julio César Avilés Oliva, Secretary-General of the STSEL's branch in firm A, for allegedly taking union leave, the Government states that the corresponding court proceedings have been temporarily suspended.

319. Concerning the filing of the application with the Second Labour Court of San Salvador, on 14 November 2014, requesting that STESEC be dissolved for alleged acts of coercion against STSEL members in firm A committed together with the managers, the Government indicates that the application for dissolution was declared "non-admissible" by the court, on 22 July 2015 (proceedings No. NUE 11755-14-LBJC-2LB1-(3), as administered by the Second Labour Court; the decision is attached to the Government's response). Pointing out that the proceedings in question contain 23 sworn witness statements, the Government states that the claims made in the complaint are therefore refuted and that it is clearly established that the President of the Commission did not, at any time, commit any acts of coercion against any worker or union activist.

320. As regards the application filed with the Fourth Labour Court for alleged acts of coercion committed by STESEC, the Government indicates that the Court, in a decision issued on 17 July 2017, upheld the lis pendens exception alleged by the defendant.

321. With respect to the hearing, mentioned by the complainant, with the Minister and the President of the Commission, the Government reports that a hearing was arranged on 13 April 2016 to launch a dialogue between the two parties involved, but that the hearing ended without a settlement being reached owing to the inflexible position of the Secretary-General of STSEL, who refused to report to her place of work.

322. In relation to the allegation concerning the request for inspections to be made by the Labour Inspectorate-General, the Government states that an inspection was requested by STSEL for the purposes of verifying whether anti-union discrimination existed in firm A; in those proceedings a breach of section 30(5) of the Labour Code was highlighted, that breach was not remedied and the case was transferred to the appropriate sanctions procedure. The Government indicates that the proceedings are with the Appeals Section of the Labour Inspectorate-General, owing to the fact that a fine of US$342.84 was imposed, for a breach of section 248 of the Labour Code, as it pertains to article 30(5) of the same Code.

323. Finally, in relation to STSEL's Secretary-General, the Government states that, as indicated in the document of 31 May 2016, firm A requested that a special or unplanned inspection be conducted so as to establish the union leader's obligation to perform the work agreed in the individual employment contract.

C. The Committee's conclusions

324. *The Committee notes that in this case the complainant (STSEL) claims that: (i) acts of interference have been committed by the President of the Hydroelectric Executive Commission (the Commission), in particular its role in creating a parallel union (STESEC); (ii) the complainant's ownership of the collective agreement has been transferred to that parallel union; (iii) union leave has been refused by firm A of the Commission for trade union leaders of various branches of STSEL; and (iv) Mr Julio Cesar Avilés Oliva, Secretary-General of STSEL's branch in firm A, has been dismissed, allegedly for taking union leave.*

325. *As to the allegations of interference by the President of the Commission and his role in setting up a parallel union (STESEC), the Committee notes the rivalries, mentioned by the complainant and the Government, between the STSEL management and the President. According to the STSEL representative, these rivalries are alleged to date back to the period during which the current President had tried to be elected as STSEL Secretary-General, and his candidacy had been rejected by the majority of members since he was acting as the employer's representative and a trusted employee in one of the Commission's firms (firm A). The Committee notes that, according to the complainant, this had given rise to some personal resentment on the part of the President towards the complainant and the willingness to create a parallel union (STESEC). The Committee also notes the information provided by the Government, according to which STESEC had been established long before the President's appointment (two years) and the STSEL union was unhappy with the appointment of the official in question as President of the Commission.*

326. *In relation to the application filed with the Second Labour Court of San Salvador, dated 14 November 2014, in which the complainant requested STESEC to be dissolved, for alleged acts of coercion against the STSEL members in firm A, committed together with the managers, the Committee notes the information provided by the Government, according to which, in a ruling issued on 22 July 2015, the application for dissolution was declared "non-admissible" (court proceedings No. NUE 11755-14-LBJC-2LB1-(3)). The Committee notes that the decision highlights the imprecise nature of the causal factors of the proof provided. In particular, the decision reads: "no evidence has been provided of the persons who have been coerced, nor has evidence been forthcoming as to who from the union that is the subject of the application has allegedly been the cause of such circumstances, nor of the means as to how the alleged coercion has been verified; by contrast, documents have been filed showing that members have moved from one union to another, without there being any violence, force or coercion in this regard … and, moreover, in the case brought, as a legal person the union has not infringed any provision of the law or of its constitution, while actions are attributed to its members as natural persons and individuals; it can therefore be inferred that cancelling the registration of a trade union or dissolving it for alleged illegal activities of some of its members, would result in broad and serious consequences for the representation of the interests of hundreds of workers". Considering that at the time the complaint was submitted, the complainant had no knowledge of the decision, the Committee requests it to indicate whether it lodged an appeal against the decision of the Second Labour Court dated 22 July 2015.*

327. *As regards the relinquishing of ownership of the collective agreement to STESEC, the Committee notes the procedure reported by the Government, in relation to the work of the National Department of Social Organizations of the Ministry of Labour, as well as the*

statistics relating to the members of the two trade unions concerned, through which evidence is provided of STSEL's loss of union ownership, owing to its smaller number of members in both the Commission and in firm A. It also notes that on 1 November 2015 a new collective agreement was subsequently formalized between firm A and the new majority union, STESEC.

328. *As regards the issue of union leave, the Committee notes that the new conditions applicable are the result of the new collective agreement mentioned and that they restrict the leave granted, although such leave is given to both unions, according to the information provided by the Government. The Committee notes that for the Government such conditions are the logical consequence of the collective agreement, as it has been negotiated by the new majority union, STESEC, while the STSEL representative appears to apply the old system which was more favourable to STSEL.*

329. *In more general terms, despite the allegations of interference and coercion of the firm in promoting a parallel union in order to damage the complainant not having been proved, and despite the consequences resulting from the loss of ownership of a collective agreement, the Committee cannot fail to note that the decision in question of the Second Labour Court, of 22 July 2015, recognizes that the members of the union which is the subject of the application (STESEC), including in its executive board, consist of persons who are managers and who, as a result, are trusted employees and represent the employers of firm A: "since there is no proof to deny that the workers in question with the relevant positions acted or act as union leaders on the general executive board and the section of the union subject to the application, it is established that as they are in fact employers' representatives and form part of the management of the relevant union, the provisions of article 225(5) of the Labour Code have been breached … and thus the work-related interests of the other workers are affected, irrespective of whether they are members of the relevant union, in so far as those employees are part of the management of that trade union and, at the same time, have been employers' representatives; this constitutes interference by the employers in the union's activities and infringes the rights of a workers' group …". In those circumstances and in the light of the information available to it, the Committee cannot exclude the possibility that the employer has grounds to isolate STSEL and promote another union (STESEC) presumably more closely suited to its interests, even to the extent of giving it ownership of the collective agreement. In this regard, the Committee considers that the fact that managers of the firm are also members of the union and of its governing board is clear evidence of unfair practice, giving rise to acts of interference in violation of Convention No. 98, Article 2, and of national legislation, with possible repercussions for collective bargaining. In this respect, the Committee reiterates that, recalling the importance of the independence of the parties in collective bargaining, negotiations should not be conducted on behalf of employees or their organizations by bargaining representatives appointed by or under the domination of employers or their organizations [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 868].*

330. *The Committee also notes that investigations have been conducted by the Labour Inspectorate-General at the request of STSEL. In this regard, the Committee notes that, according to the complainant, the inspectorate noted the instances of coercion reported – although the organization did not provide further details – and that the Government indicates that the inspectorate highlighted a breach of article 30(5) of the Labour Code in firm A (referring to anti-union practices, and direct or indirect discrimination), which was not remedied, and the case was transferred to the appropriate sanctions procedure. The Committee further notes that the case is currently with the Appeals Section of the Labour Inspectorate-General, owing to the fact that a fine of US$342.84 was imposed for a breach of article 248 of the Labour Code, relating to the protection of trade union immunity, as it pertains to article 30(5) of the same Code.*

331. *The Committee requests the Government to provide detailed information on the anti-union practices observed by the Labour Inspectorate-General in firm A. The Committee requests the Government to keep it informed of the outcome of the corresponding sanctions procedure, so as to ensure that the sanctions applied are sufficiently dissuasive as to guarantee the freedom of association of all workers in the firm.*

332. *As to the dismissal of Mr Julio César Avilés Oliva, Secretary-General of STSEL's branch in firm A, the Committee notes that, according to the complainant, firm A dismissed Mr Avilés Oliva on 15 May 2015 for taking union leave, despite the fact that the Director-General of Labour of the Ministry of Labour had issued a ruling, dated 31 October 2014, that STSEL union leaders could take union leave as per the collective labour agreement. The Committee also notes that the Government indicates that the corresponding court proceedings have been temporarily suspended. Drawing attention to the Workers' Representatives Convention, No. 135 and Recommendation No. 143 (1971), in which it is expressly established 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****, op. cit., para. 800], the Committee urges the Government to inform it of the outcome of the court case in progress.*

The Committee's recommendations

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

(a) The Committee invites the complainant to indicate whether it lodged an appeal against the decision of the Second Labour Court, dated 22 July 2015.

(b) The Committee requests the Government to provide detailed information on the anti-union practices observed by the Labour Inspectorate-General in firm A and to keep it informed of the outcome of the corresponding sanctions procedure, so as to ensure that the sanctions applied are sufficiently dissuasive as to guarantee the freedom of association of all the workers in the firm in question.

(c) As to the dismissal of Mr Julio César Avilés Oliva, Secretary-General of STSEL's branch in firm A, the Committee urges the Government to inform it of the outcome of the court case in progress.

CASE NO. 2989

DEFINITIVE REPORT

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

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

334. In its previous examination of the case, in the absence of a reply from the Government, the Committee presented an interim report to the Governing Body [see 372nd Report, paras 308–317, approved by the Governing Body at its 321st Session (June 2014)].

335. Following this examination, the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) provided additional information in communications dated 16 June and 27 August 2015.

336. The Government sent its observations in communications dated 28 August 2015 and 29 April 2016.

337. Guatemala 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 Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

338. In its previous examination of the case in June 2014, the Committee made the following recommendations [see 372nd Report, para. 317]:

(a) The Committee deeply regrets to note that, despite several requests and urgent appeals, the Government has failed to provide any information on the allegations.

(b) While recalling that the right to recognition through official registration is a key aspect of the right to organize, the Committee urges the Government to send as a matter of urgency its observations regarding the allegations of unjustified refusal to register the two trade unions.

(c) Recalling that no person should be dismissed or prejudiced on account of legitimate activities such as the establishment of a trade union, the Committee strongly hopes that, if the existence of the judicial decisions referred to by the complainant is verified, the Government will ensure that the administration concerned has complied with the orders to reinstate in their posts the workers who were dismissed further to the establishment of a trade union and will keep the Committee informed in this respect.

B. The complainant's additional allegations

339. In communications dated 16 June and 27 August 2015, the complainant organization provides additional information concerning the refusal to register the "Pro Dignity" Union of Workers at the Tax Supervisory Authority (SIPROSAT) and the dismissals of the founding members of SIPROSAT and the Union of Workers with Principles and Values at the Tax Supervisory Authority (SITRAPVSAT). With regard to the refusal to register SIPROSAT, the complainant states that: (i) on 17 August 2012, a group of workers had filed an application with the Labour Directorate-General at the Ministry of Labour and Social Welfare (hereinafter the Labour Directorate-General) for the registration of SITRAPVSAT; (ii) following the Labour Directorate-General's refusal to register SITRAPVSAT on 27 August 2012 and the dismissals of three of its founding members (Mr Waldemar Eduardo Ardón Sandoval, Ms Sandra Karem Meléndez Gómez and Mr Axel Alberto Orellana González), the tax administration workers decided to establish a new trade union, SIPROSAT, notifying the General Labour Inspectorate of this on 7 September 2012; (iii) given the prevailing atmosphere of anti-union repression in the tax administration and it not being possible to hold the constituent assembly during working hours, notice was given of the establishment of SIPROSAT a few hours before the constituent assembly was held, which took place at the end of the working day; (iv) even though the law does not provide for the involvement of an employer in the establishment of a trade union, a list of the founding members of SIPROSAT was immediately forwarded by the General Labour Inspectorate to the tax administration, which then immediately dismissed Ms Luisa Victoria Ramírez Palencia de Luna, Ms Dulce María José Ramírez García, Ms Sylvia Guadalupe Burbano Arriola, Ms Claudia Catalina García Jurado de Gálvez, Ms Diana Marisol Merlos Rodas, Mr Juan Manuel Yanes Chávez, Mr Juan Carlos Alegría Sáenz, Mr Omar Aleksis Ambrocio López, Mr Edwin Haroldo Mayén Alvarado, Mr Rodrigo Estuardo Letrán Mejía, Mr José Julio Cordero Castillo, Mr Luis Argelio Villatoro Cifuentes, Mr Edwin Alexander Villeda Portillo, Mr Byron Giovanni Esquivel Tercero and Mr Francisco Antonio Cifuentes Alecio (15 workers in total).

340. The complainant states further that, after a number of obstacles, the Constitutional Court ruled, in judgments handed down in 2014 and 2015, that 13 of the workers dismissed further to the establishment of SIPROSAT and SITRAPVSAT should be reinstated, namely Ms Dulce María José Ramírez, Mr Luis Argelio Villatoro Cifuentes, Ms Claudia Catalina García Jurado de Gálvez, Mr José Julio Cordero Castillo, Ms Sylvia Guadalupe Burbano Arriola, Mr Edwin Haroldo Mayén Alvarado, Mr Edwin Alexander Villeda Portillo, Mr Byron Giovanni Esquivel Tercero, Mr Rodrigo Estuardo Letrán Mejía, Ms Diana Marisol Merlos Rodas, Ms Sandra Karem Meléndez Gómez, Mr Waldemar Eduardo Ardón Sandoval and Mr Axel Alberto Orellana González. In the judgments handed down in these cases, the Court maintained that, in order to establish when the immunity against dismissal of the founding members of the trade union came into effect, it was immaterial to ascertain whether the General Labour Inspectorate had been notified of the establishment of the trade union before the official act constituting the trade union had taken place and whether the union had actually been registered by the labour administration.

341. The complainant notes, however, that the application for the reinstatement of Ms Luisa Victoria Ramírez Palencia de Luna, Mr Juan Manuel Yanes Chávez, Mr Juan Carlos Alegría Sáenz and Mr Omar Aleksis Ambrocio López was treated differently by the Constitutional Court, even though the facts in all of the cases resulting in the Constitutional Court ordering reinstatement were completely identical. The complainant adds that: (i) in the case of Ms Luisa Victoria Ramírez Palencia de Luna, Mr Juan Manuel Yanes Chávez, Mr Juan Carlos Alegría Sáenz and Mr Omar Aleksis Ambrocio López, the Constitutional Court did take into account the false information submitted by the then Minister of Labour and Social Welfare, according to which the General Labour Inspectorate had not received the notification of the establishment of SIPROSAT dated 7 September 2012; (ii) this false information had been dismissed by the Court in the other cases; and (iii) the existence of a

clear violation of the right to effective protection and the principle of equality to the detriment of the above four workers led to an appeal being lodged, which was rejected by the Court.

C. The Government's reply

342. In its communication dated 28 August 2015, the Government states, firstly, that the refusal to register SIPRAVSAT and SIPROSAT was not an arbitrary act; rather, it was a decision based on compliance with existing legislation. With regard to the application to register SIPROSAT, the Government notes that Decision No. 12-2012 issued by the Labour Directorate-General refused to register the union for failure to reach the minimum required number of members (20), since: (i) of the 25 union members, 21 were also members of the applicant trade union SITRAPVSAT, in which case, article 212 of the Labour Code must be taken into account, which stipulates that no one may belong to two or more trade unions at the same time; (ii) as the tax administration indicated in its objection to the establishment of SIPROSAT, several union members were the employer's representatives (Mr Vinicio Madrid Madrid and Ms Diana Marisol Merlos Rodas, lawyers authorized to represent the institution, and Mr David Felipe Reynoso, Mr Edwin Haroldo Mayen Alvarado and Mr Estuardo Letrán Mejía, occupying positions as chiefs or supervisors); and (iii) Ms Sandra Karem Meléndez Gómez and Mr Waldemar Eduardo Ardón Sandoval were no longer working for the tax administration, having had their contracts terminated prior to the trade union's application for registration.

343. The Government further states that, on 4 January 2013, SIPROSAT lodged an *amparo* appeal with the Second Chamber of the Labour and Social Welfare Court of Appeal against the Director-General of Labour and the General Secretariat of the Ministry of Labour and Social Welfare for the following grievances: (i) failure to notify the relevant departments in the Ministry of Labour and Social Welfare of the establishment of SIPROSAT; (ii) providing information to the employer on the identity of the union's founding members; (iii) allowing the employer to intervene in the procedure to recognize the union's legal status, including by processing the objection to the union's establishment lodged by the tax administration; and (iv) interference by the employer in the selection of those of the entity's workers permitted to join the trade union. The Government states that both the lower and higher courts declared the *amparo* appeal inadmissible on the grounds of failure to first exhaust all available procedures and remedies.

344. The Government provides additional information on the status of the judicial proceedings to secure reinstatement initiated by the tax administration's workers dismissed at the time of the establishment of SITRAPVSAT and SIPROSAT, and of compliance with the corresponding reinstatement orders. The Government notes in this respect that: (i) of the 17 dismissed workers who took legal action, 13 were granted reinstatement orders, while four workers were denied reinstatement; (ii) of the 13 workers granted reinstatement orders, 12 were actually reinstated (Ms Dulce María José Ramírez, Ms Claudia Catalina García Jurado de Gálvez, Ms Sylvia Guadalupe Burbano Arriola, Ms Diana Marisol Merlos Rodas, Mr Luis Argelio Villatoro Cifuentes, Mr José Julio Cordero Castillo, Mr Edwin Haroldo Mayén Alvarado, Mr Edwin Alexander Villeda Portillo, Mr Byron Giovanni Esquivel Tercero, Mr Rodrigo Estuardo Letrán Mejía, Mr Francisco Antonio Cifuentes Alecio and Mr Waldemar Eduardo Ardón Sandoval), while Mr Axel Alberto Orellana's case is still pending and, in this connection, the tax administration lodged an *amparo* appeal against the judicial decision on reinstatement; and (iii) of the 12 persons actually reinstated, four resigned from their posts in the following months.

345. In its communication of 29 April 2016, the Government refers specifically to the Constitutional Court's decisions refusing to reinstate four of the 17 workers dismissed in conjunction with the attempt to establish SITRAPVSAT and SIPROSAT. The Government

refers in particular to the complainant's allegation that all of the judgments concerning the founders of SIPROSAT should have been handed down in the same manner, given that all of the dismissals took place on the same day and on the same grounds. In this regard, the Government states that: (i) the notification of the establishment of SIPROSAT, sent to the General Labour Inspectorate on the morning of 7 September 2012, was issued before the process to register SITRAPVSAT had been finalized and before the constituent assembly had actually been held, which took place on the same day at 7 p.m.; (ii) between 2 p.m. and 3 p.m. on that day, the labour administration dismissed 15 workers, all of whom were included in the notification of the trade union's establishment; (iii) legal proceedings were initiated for the reinstatement of these workers, in addition to two others, dismissed at the time of the establishment of SIPRAVSAT; (iv) the Constitutional Court ordered the reinstatement of 13 of these workers, while denying this right to Ms Luisa Victoria Ramírez Palencia de Luna, Mr Juan Carlos Alegría Sáenz, Mr Omar Aleksis Ambrocio López and Mr Juan Manuel Yanes Chávez, thus upholding the higher court rulings of the First Chamber of the Labour and Social Welfare Court of Appeal; (v) the Constitutional Court observed that the Court of Appeal had noted a series of irregularities in the actions of the workers making a claim, namely that, on the one hand, the General Labour Inspectorate had been informed of the establishment of the trade union on the morning of 7 September 2012, while its constituent assembly had been held in the evening of the same day, between 7 p.m. and 9 p.m., and, on the other hand, that the applications for the reinstatement of Mr Juan Carlos Alegría Sáenz and Mr Omar Ambrosio were submitted at 8.42 p.m. and 8.47 p.m., that is before the official act constituting the trade union, which confers extra protection against dismissal; and (vi) consequently, the Constitutional Court found that the applicants' actions had been frivolous and in bad faith, in attempting to claim that at the time of their dismissal they benefited from the right to immunity against dismissal provided for in article 209 of the Labour Code granted to workers who are establishing a trade union organization.

D. The Committee's conclusions

346. *The Committee recalls that the allegations in the present case concern both the refusal by the Ministry of Labour and Social Welfare to register two trade union organizations within the tax administration and anti-union dismissals affecting the founders of these trade unions and the refusal by the tax administration to comply with reinstatement orders. The Committee notes that the allegations concerning the refusal to register SITRAPVSAT, which were presented by the complainant in several complaints, are already under examination by the Committee in Case No. 3042. The Committee will therefore focus in the present case on the allegations concerning the refusal to register SIPROSAT and the alleged anti-union dismissals of the founding members of both organizations.*

347. *With respect to the alleged unjustified refusal to register SIPROSAT which, according to the complainant, involves collusion between the tax administration and the labour administration, the Committee notes that the Government states that the trade union was not registered because it did not have the minimum number of workers required in law (20), since: (i) 21 of the 25 members of SIPROSAT were already members of the applicant trade union SITRAPVSAT, and it was not possible under Guatemalan law to be a member of two trade union organizations at the same time; and (ii) several founding members of the union occupied positions of trust within the tax administration, meaning that they could not join the union. The Government adds that the complainant lodged an* amparo *appeal alleging irregularities and unlawful acts committed by the tax administration and the labour administration when considering the application to register SIPROSAT, and that the appeal was declared inadmissible on the grounds of failure to first exhaust all available administrative remedies.*

348. *With regard to the fact that a number of workers belonging to SIPROSAT had formerly been members of the applicant trade union SITRAPVSAT (both trade unions were in the same*

entity), the Committee notes that the application to register SITRAPVSAT, forwarded to the labour administration on 17 August 2012, was refused, in Decision No. 008-2012 of 27 August 2012, and that the labour administration was notified of the establishment of a new trade union in the tax administration (in this case SIPROSAT) on 7 September 2012. In so far as members of SITRAPVSAT joined SIPROSAT after the refusal to register the first of the two unions, the Committee considers that the issue of belonging to two applicant unions should not have impeded the registration of SIPROSAT. With respect to the presence of workers occupying positions of trust among the founding members of SIPROSAT, resulting in the prohibition of its right to organize, the Committee recalls that limiting the definition of managerial staff to persons who have the authority to appoint or dismiss is sufficiently restrictive to meet the condition that these categories of staff are not defined too broadly that [see ***Digest of decisions and principles of the Committee on Freedom of Association****, fifth (revised) edition, 2006, para. 249]. The Committee considers that the trade union organization can adapt its request to the above consideration and submit once again its application for registration, if it so wishes.*

349. *Concerning the application to reinstate 17 founding members of SITRAPVSAT (two) and SIPROSAT (15), the Committee notes that the complainant and the Government both agree that 13 workers (two founding members of SITRAPVSAT and 11 founding members of SIPROSAT) were granted reinstatement orders, while another four founding members of SIPROSAT (Ms Luisa Victoria Ramírez Palencia de Luna, Mr Juan Manuel Yanes Chávez, Mr Juan Carlos Alegría Sáenz and Mr Omar Aleksis Ambrocio López) were denied this right. The Committee also notes from the information provided by the Government that 12 of the 13 reinstatement orders were complied with, while the examination of the* amparo *appeal lodged by the tax administration against the judicial decision on the reinstatement of Mr Axel Alberto Orellana is still pending. The Committee notes this latest information and expects that the decision of the* amparo *proceedings concerning the reinstatement of Mr Axel Alberto Orellana will be rendered rapidly.*

350. *With regard to the situation of the four founding members of SIPROSAT whose application to the courts for reinstatement was rejected by the Constitutional Court, the Committee notes, firstly, that the complainant alleges that: (i) the facts leading to the dismissal of the four founding members were completely identical to those in the other 11 cases of dismissal of the founding members of SIPROSAT, in respect of which the Constitutional Court did order reinstatement; (ii) in those 11 cases, the Court deemed that it was immaterial to ascertain whether the General Labour Inspectorate had been notified of the establishment of the trade union before the official act constituting the union had taken place, or whether the union had actually been registered by the labour administration. However, the Court took the opposite view with respect to the four non-reinstated workers, and no explanation or justification has been provided for the different criteria applied by the Court. The Committee notes, secondly, that the Government states that the Constitutional Court refused to register the four workers, upholding the Court of Appeal's decision that it had found irregularities, consisting mainly in the fact that the General Labour Inspectorate had been notified of the process to establish the union in the morning of 7 September 2012, while its constituent assembly had been held on the evening of the same day, between 7 p.m. and 9 p.m. This meant that, at the time of their dismissal, the four workers did not benefit from the protection provided for in the Labour Code (which provides that for a period of 60 days from the notification of the establishment of a trade union the employer must obtain judicial authorization to dismiss the union's founding members).*

351. *In the light of the foregoing and from reading the Constitutional Court's judgments provided by the complainant and the Government, the Committee notes the following: (i) on the morning of 7 September 2012, the General Labour Inspectorate was notified that a trade union organization was being established, and was provided with a list of the names of its founding members; (ii) between 3 p.m. and 4 p.m. on the same day, the 15 founding members of the applicant organization were dismissed; (iii) between 7 p.m. and 9 p.m. on that day,*

the founding members of SIPROSAT held their constituent assembly and the dismissed workers immediately sought reinstatement through the courts; (iv) in 11 judgments handed down between 15 July 2014 and 13 January 2015, the Constitutional Court upheld the reinstatement of 11 founding members of SIPROSAT, endorsing the lower court reasoning that, from the moment the General Labour Inspectorate had been notified of the process to establish a trade union, the employer was obliged to obtain judicial authorization before dismissing its founding members; and (v) in judgments dated 11 December 2014 and 6 August 2015, the Constitutional Court upheld the refusal to reinstate four founding members of SIPROSAT, endorsing the lower court reasoning that notifying the General Labour Inspectorate of the process to establish a trade union before holding its constituent assembly constitutes an irregularity and that the dismissal of the four workers, which took place before the assembly, did not require prior judicial authorization.

352. *The Committee notes that of the 15 dismissals of the founding members of SIPROSAT, 11 workers obtained reinstatement through the courts, while this right was denied to another four workers. The Committee notes that, according to the decision of the Constitutional Court concerning these latter, the applicants' actions had been frivolous and in bad faith in attempting to claim that at the time of their dismissal they benefited from the right to immunity against dismissal. The Committee recalls that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present [see* ***Digest****, op. cit., para. 770]. The Committee considers that, given the circumstances surrounding the dismissal of Ms Luisa Victoria Ramírez Palencia de Luna, Mr Juan Manuel Yanes Chávez, Mr Juan Carlos Alegría Sáenz and Mr Omar Aleksis Ambrocio López, the Government could transmit to the tax administration the possibility of establishing conversations to arrive at a constructive dialogue with the union leaders about these circumstances.*

The Committee's recommendation

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

CASE NO. 3062

INTERIM REPORT

Complaint against the Government of Guatemala presented by
– the General Confederation of Rural and Urban Workers (CTC) and
– the Workers' Union of the Guatemalan Olympic Committee (SITRACOGUA)

Allegations: the complainant organizations denounce mass dismissals in retaliation for the establishment of the Workers' Union of the Guatemalan Olympic Committee, as well as acts of intimidation against the workers of the sports institution in order to pressure them into resigning from the union

354. In its previous examination of the case, the Committee presented an interim report to the Governing Body [see 376th Report, paras 569–585, approved by the Governing Body at its 325th Session (October–November 2015)].

355. Following this examination, the Workers' Union of the Guatemalan Olympic Committee (SITRACOGUA) sent additional information in a communication dated 3 February 2016.

356. The Government provided additional observations in communications dated 16 February 2016, 24 January and 2 August 2017.

357. Guatemala 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 Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

358. In its previous examination of the case in October 2015, the Committee made the following recommendations on matters still pending [see 376th Report, para. 585]:

(a) The Committee requests the complainant organizations to indicate clearly the identity and the exact number of workers belonging to SITRACOGUA who were dismissed on 31 January 2014.

(b) The Committee strongly hopes that the legal challenge to the dismissal of the founding members of SITRACOGUA will soon be examined and that, in the event that the decision of first instance upholds the request for reinstatement issued by the General Labour Inspectorate, all necessary measures will be taken to ensure that the workers will be effectively and immediately reinstated. The Committee requests the Government to inform it urgently in this regard.

(c) The Committee strongly hopes that the investigation of the Office of the Attorney-General into the acts of discrimination, coercion and violence against members of SITRACOGUA will be completed without further delay. The Committee requests the Government to inform it urgently in this regard.

(d) The Committee requests the Government to ensure that the competent authorities have examined the aforementioned request for protection measures for the union leaders, Ms Marina García and Ms Suleima de León, in a timely, appropriate manner and to inform it urgently of the decisions taken in this regard.

(e) The Committee trusts that the interventions of the various aforementioned public institutions will ensure the free exercise of freedom of association and collective bargaining within the Guatemalan Olympic Committee.

B. Additional information from the complainant organizations

359. In a communication dated 3 February 2016, SITRACOGUA provides additional information regarding the allegations examined by the Committee pertaining to this case. The complainants emphasize that: (i) 20 workers belonging to SITRACOGUA were dismissed on 31 January 2014; (ii) 16 of the 20 workers filed a request for reinstatement (Ms Suleima Adaia de León Segura, Ms Mariana Melina García Hernández, Mr Sergio Eduardo Golón Diaz, Ms Tania Rubi López Figueroa, Mr Charles Michel Legrand Aceituno, Ms Estela Marina Sosa Arroyave, Mr Pablo Renato García Flores, Ms Jessica Rosmery Lemus Herrera, Ms Carolina Raquel Pereira Mejía, Mr Marvin Geovani Gómez Alvarado, Ms Vivian Lucrecia Morales, Mr Hugo Esmaily Diaz de León, Mr Mario Antonio Mendoza Pineda, Ms Karyn Odilia Ochoa Ruano, Mr Shayne Mariveth Ruiz Palomo and Mr Pedro Herrarte Pineda); (iii) on 10 July 2015, the Constitutional Court rejected the appeal filed by the Guatemalan Olympic Committee (hereinafter "the sports institution") against the registration of SITRACOGUA; (iv) there has been no response from the Office of the Prosecutor-General of Human Rights regarding the complaint made (by SITRACOGUA) on 5 March 2014; (v) a partial follow-up to the complaint was given before the Public

Prosecutor's Office on 25 November 2015, and the hearing before the second chamber of the criminal branch of the lower court with several judges was suspended, owing to the failure of the sports institution's executive committee to appear; (vi) to date, the labour courts have not issued a ruling on the complaints filed by SITRACOGUA and its members because of the sports institution's legal delaying tactics; (vii) the examination of the case, between 19 May and 7 December 2015, by the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining was totally ineffective, due to the employer's lack of willingness to come to an agreement and the failure of the committee's chairperson to take any action; (viii) the anti-union attitude of the leaders of the sports institution was made clear when they came before the committee and proposed that the workers who had been dismissed, despite enjoying immunity from dismissal, be reinstated on condition that they resign the following day; (ix) reprisals by the sports institution continue against members of the SITRACOGUA executive committee, including the two-day suspension from duty without pay imposed on the union's finance secretary, Mr Joel Zeceña García, and the two-day suspension from duty without pay imposed on Mr Luis Arturo Chinchilla Gómez, for using the time granted to them for union activities to attend the criminal hearing on 25 November 2015 against the sports institution; during that hearing, Mr Chinchilla was subjected to intimidation by a person close to the institution's general manager; and (x) on 11 December 2015, SITRACOGUA submitted a draft collective agreement on working conditions, but this did not lead to any negotiations with the sports institution; rather, the latter forwarded the draft to the Office of the Attorney-General, claiming it to be prejudicial in nature.

C. The Government's reply

360. In its communications dated 16 February 2016, 24 January and 2 August 2017, the Government begins by providing information on the judicial proceedings relating to compliance with labour legislation raised in this case, noting that: (i) in a ruling dated 10 July 2015, the Constitutional Court rejected the appeal filed by the sports institution against the registration of SITRACOGUA; (ii) on 26 July 2016, the 12th labour and social welfare court issued a ruling on the appeal filed by Mr Joel Zeceña García and Mr Luis Arturo Chinchilla against the disciplinary sanctions (two-day suspensions) imposed on them by the sports institution, and ordered it to refrain from carrying out reprisals against SITRACOGUA members and to revoke and annul the aforementioned disciplinary sanctions imposed on Mr Joel Zeceña García and Mr Luis Arturo Chinchilla within three days; (iii) however, in a ruling dated 10 August 2016, subsequently confirmed in appeal, it declared inadmissible proceedings brought before the regular labour court by Mr Joel Zeceña García against the sports institution; (iv) the proceedings brought before the regular labour court by several of the sports institution's workers to seek reinstatement are still pending while the Supreme Court of Justice examines in appeal the request for a joinder of proceedings filed by the sports institution; and (v) the complaint filed by SITRACOGUA with the Office of the Prosecutor-General of Human Rights was closed because the allegations made were already known to the labour and social welfare courts.

361. The Government then provides information on the criminal proceedings instituted in connection with the allegations made in the present case, indicating that: (i) the third criminal court responsible for narcotics offences and crimes against the environment in Guatemala City, acting as an *amparo* court, in a ruling dated 14 April 2016 dismissed the criminal complaint filed by SITRACOGUA against the executives of the sports institution alleging offences of discrimination, violence against women and coercion, as it considered there were no grounds for subjecting the sports institution's executives to a public oral hearing for offences against the institution's union; (ii) the special investigation unit for offences committed against trade unionists within the Public Prosecutor's Office filed an appeal against this ruling; and (iii) finding that there was insufficient factual evidence, the Public Prosecutor's Office dismissed the complaint alleging intimidation and reprisals filed by

Mr Zeceña against the executives of the sports institution after an individual close to the institution's executive committee had apparently recorded Mr Zeceña during a criminal hearing.

362. With regard to the request for protection measures for the union leaders Ms Marina García and Ms Suleima de León, the Government states that the Ministry of the Interior indicates that there has been no request for a risk assessment for these two individuals. The Government further notes that the unit for offences committed against trade unionists within the Public Prosecutor's Office did request safety measures for Mr Joel Zeceña, Ms Dora Marina de León Benavente and Ms Magda Azucena Rosas Flores; however, it did not request safety measures for Ms Marina García and Ms Suleima de León, given that these two persons had filed complaints relating only to their dismissals and coercion against union members.

363. Lastly, the Government states that: (i) the mediation process within the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining in connection with the dismissal of members failed because of the inflexible positions of the parties, and the committee's independent mediator apologized to SITRACOGUA for failing to inform it of the outcome of the session of 2 July 2015; and (ii) the Office of the Attorney-General indicated that there is no record on file of any declaration to the effect that a collective agreement on working conditions signed between the sports institution and its workers' union is prejudicial.

D. The Committee's conclusions

364. *The Committee recalls that this case concerns the complaint of mass dismissals within a sports institution in retaliation for the establishment of the Workers' Union of the Guatemalan Olympic Committee (SITRACOGUA), as well as acts of intimidation against the workers of that institution in order to pressure them into resigning from the union.*

365. *With regard to the dismissal of the founding members of SITRACOGUA, the Committee notes the additional information submitted by that organization, stating that 20 workers belonging to SITRACOGUA were dismissed on 31 January 2014, 16 of whom went to court to seek reinstatement, and that, as a result of the employer's delaying tactics, the courts had still not issued a ruling on the requests for reinstatement. The Committee also notes that the Government reports that, following several appeals filed by the sports institution, the Supreme Court's examination in appeal of the request for a joinder filed by the sports institution is still pending – a preliminary step required before the courts can rule on the requests for reinstatement. The Committee also notes that both the complainants and the Government provide information on the mediation process that took place within the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining and on the failure to reach an agreement within this body.*

366. *The Committee recalls that, in its previous examination of the case, it had taken note of the reports of the General Labour Inspectorate forwarded by the Government, which indicated that the dismissals had affected all the leaders of the recently created SITRACOGUA, the employer having ignored the temporary protection afforded to those leaders under Guatemalan legislation and that, as a result, the labour inspectors had issued a request for reinstatement. The Committee had also expressed its concern at the fact that, 18 months after the decision of the General Labour Inspectorate requesting the reinstatement of the founding members of SITRACOGUA, no ruling had been handed down in this case. The Committee notes with deep concern that, more than three-and-a-half years after the aforementioned dismissals and the corresponding request for reinstatement by the General Labour Inspectorate, procedural rulings are still pending that would enable the courts to examine the substance of the case. The Committee therefore finds itself bound, once again,*

to recall 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, and that an excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 820 and 826]. The Committee once again expresses the strong hope that the judicial challenge to the dismissal of the founding members of SITRACOGUA that affects not only the individuals concerned, but also the group of workers that they represent, is resolved as soon as possible. Considering both the existence of a decision of labour inspection and the excessive delay in the resolution of the aforementioned requests for reinstatement, the Committee requests the Government to examine the ways in which effect could be given to the decision of labour inspection. The Committee requests the Government to keep it informed of any progress made in this regard.*

367. *In general, the Committee notes the repetitive character of the cases examined concerning Guatemala where it has had to observe the slowness of legal proceedings or the non-execution of reinstatement orders of dismissed workers on trade union grounds (see Case No. 2948, Report No. 382, June 2017, paras 375–378; Case No. 2989, Report No. 372, June 2014, para. 316; Case No. 2869, Report No. 372, June 2014, para. 296). In this connection, the Committee recalls that, under the terms of the Memorandum of Understanding signed with the Workers' group of the ILO Governing Body on 26 March 2013 further to the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), presented under article 26 of the ILO Constitution, the Government made a commitment to adopt "policies and practices to ensure the application of labour legislation, including … effective and timely judicial procedures". In view of the above, the Committee once again urges the Government, in consultation with the social partners, to carry out a thorough revision of the procedural rules of the relevant labour regulations to ensure that the judiciary provides appropriate and effective protection against cases of anti-union discrimination. The Committee requests the Government to keep it informed in this respect.*

368. *With respect to the allegations of other anti-union acts within the sports institution, including the use of intimidation to pressure workers into resigning, the Committee takes note of the additional information submitted by the complainants stating that: (i) reprisals by the sports institution continue against SITRACOGUA union leaders, namely imposing a disciplinary sanction of suspension on two of them for carrying out their trade union activities; and (ii) the complaints lodged by the union with the criminal and labour courts in respect of the various anti-union acts committed by the sports institution have not, to date, led to any decisions being made by the relevant authorities. The Committee also notes that, according to information provided by the Government: (i) in a ruling on 26 July 2016, the 12th labour and social welfare court issued a ruling that the disciplinary sanctions of suspension of the employment contract without pay imposed on Mr Joel Zeceña García and Mr Luis Arturo Chinchilla were unlawful, and urged the sports institution to refrain from carrying out reprisals against SITRACOGUA members; (ii) another complaint filed with the labour court by Mr Joel Zeceña García was declared inadmissible in a first instance ruling on 10 August 2016. This ruling was later confirmed in appeal; and (iii) the complaint filed with the criminal court by SITRACOGUA against the executives of the sports institution alleging offences of discrimination, violence against women and coercion was dismissed by the third lower criminal court responsible for narcotics offences and crimes against the environment, in Guatemala City, in a ruling on 14 April 2016, the ruling having been appealed by the special investigation unit for offences committed against trade unionists; a second complaint alleging acts of intimidation filed by Mr Joel Zeceña García with the criminal court was closed by the Public Prosecutor's Office on grounds of lack of evidence. Taking due note of*

the decisions already taken and of those still pending, the Committee requests the Government to keep it informed of the outcome of the appeal lodged by the Public Prosecutor's Office in connection with the complaint filed with the criminal court by SITRACOGUA against the executives of the sports institution.

369. *With regard to the request for protection measures for the union leaders Ms Marina García and Ms Suleima de León, the Committee notes that the Government states that the special investigation unit for offences committed against trade unionists within the Public Prosecutor's Office, although requesting safety measures for some SITRACOGUA members, did not request them for Ms Marina García and Ms Suleima de León, given that these two persons had filed complaints relating only their dismissals and coercion against union members. The Committee requests the Government to take the security measures that might be necessary should Ms García and Ms de León so request.*

370. *Observing that the conflict following the establishment of SITRACOGUA remains unresolved almost four years after the creation of this trade union, the Committee once again trusts that the intervention of various public institutions will guarantee the free exercise of the right to freedom of association and collective bargaining within the sports institution.*

The Committee's recommendations

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

(a) The Committee once again expresses the strong hope that the judicial challenge to the dismissal of the founding members of SITRACOGUA is resolved as soon as possible. Considering both the existence of a decision of labour inspection and the excessive delay in the resolution of the aforementioned requests for reinstatement, the Committee requests the Government to examine the ways in which effect could be given to the decision of labour inspection. The Committee requests the Government to keep it informed of any progress made in this regard.

(b) The Committee once again urges the Government, in consultation with the social partners, to carry out a thorough revision of the procedural rules of the relevant labour regulations to ensure that the judiciary provides appropriate and effective protection against cases of anti-union discrimination. The Committee requests the Government to keep it informed in this respect.

(c) The Committee requests the Government to keep it informed of the outcome of the appeal lodged by the Public Prosecutor's Office concerning the criminal complaint filed by SITRACOGUA against the executives of the sports institution.

(d) The Committee requests the Government to take the security measures that might be necessary should Ms García and Ms de León so request.

(e) The Committee once again trusts that the interventions of the various public institutions will ensure the free exercise of freedom of association and collective bargaining within the sports institution.

CASE NO. 3125

DEFINITIVE REPORT

Complaint against the Government of India presented by the Modelama Workers Union (MWU) supported by the Garment and Allied Workers Union of India (GAWU)

Allegations: The complainant organization alleges forced transfer of union leaders, illegal termination, intimidation and physical threats against union members in retaliation for union activities. The complainant further alleges unjust denial of registration by the Registrar of trade unions in the Haryana State

372. The Committee last examined this case at its October 2016 meeting when it presented an interim report to the Governing Body [see 380th Report, approved by the Governing Body at its 328th Session (November–December 2016), paras 543–561].

373. The Government provided its observations in a communication dated 12 September 2017.

374. India 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

375. At its October 2016 meeting, the Committee made the following recommendations [see 380th Report, para. 561]:

(a) While observing that the specific issues raised in this case concern the State of Haryana, the Committee is bound to remind the federal Government that the principles of freedom of association should be fully respected throughout its territory. The Committee invites the Government to bring its conclusions and recommendations to the attention of the competent authorities in the State of Haryana with a view to resolving the issues of the case and to obtain full particulars from the State of Haryana for the Committee's next examination.

(b) As regards the 16 office-bearers, namely Bramhanand Bhiuyan, Brijesh Prasad, Manoj Kumar Singh, Murari Prasad, Rajendra Prasad, Ramnath, Manju Devi, Ashok Kumar, Vinod Kumar, Hem Narayan Jha, Shishu Pal, Ashutosh Yadav, Sharwan Kumar, Pramod Kumar, Ranjeet Kumar and Grijesh Kumar, who had been dismissed or forced to resign, the Committee regrets that the Government did not provide any comments on this allegation and requests it to ensure that the State of Haryana carries out an independent inquiry to determine whether their dismissals or forced resignations were due to their trade union activity, with due attention being paid to their role in the union and the abovementioned principles, and should it be found that their dismissals or forced resignations were motivated by trade union membership or legitimate trade union activities, takes the necessary measures for the reinstatement of workers in their functions without loss of seniority or the payment of adequate compensation. The Committee further requests the Government to ensure that the State of Haryana conducts an independent inquiry into the allegations of large-scale dismissals and forced resignations of around 200 trade union members in order to determine the real motives behind these measures

and, should it be found that they were motivated by trade union membership or legitimate trade union activities, takes the necessary measures to reinstate the concerned workers in their functions without loss of seniority, if they so wish, or pay them adequate compensation. The Committee requests the Government to keep it informed of any developments in this regard.

(c) The Committee requests the Government to respond to the complainant's allegations indicating why the Labour-cum-Conciliation Officer did not take any action in response to the complaints of illegal dismissals and unfair labour practices. The Committee further requests the Government to take the necessary measures to encourage a climate where trade union rights can be freely and safely exercised, by effectively ensuring that trade union members and leaders are not subjected to anti-union discrimination or harassment, including dismissal, transfers, threats and other acts prejudicial to the workers based on their trade union membership or activities and that any complaints of anti-union discrimination or harassment are examined by prompt and impartial procedures.

(d) The Committee requests the Government to ensure that the State of Haryana re-examines the application for registration fully taking into account all the documents submitted to the Registrar and duly bearing in mind the allegations of anti-union discrimination only weeks after the request for registration and to inform it of any developments in this regard. The Committee trusts that the Government will ensure that situations where there are serious allegations of anti-union dismissals which may have an impact on the union's registration are carefully examined by the Registrar in order to avoid anti-union practices further penalizing trade unions in their application for registration.

(e) The Committee regrets that it had to examine this case without being able to take account of the observations of the enterprise concerned and requests the Government to obtain, through the relevant employers' organization, information from the enterprise on the questions under examination.

B. The Government's reply

376. In its communication dated 12 September 2017, the Government replies to the Committee's recommendations. The Government indicates that it has duly communicated to the Government of Haryana the observations of the Committee and the issue was duly examined by the Labour Commissioner, Labour Department, Government of Haryana. Comments were provided with regard to all recommendations, and are transmitted by the Government for the attention of the Committee.

377. The Government indicates that in the State of Haryana, there is total freedom of association and there are no restrictions on the formation of trade unions whatsoever. All registration applications received under the Trade Unions Act, 1926, are dealt with fairly and decided strictly as per the provisions of the Act and the rules framed thereunder.

378. With regard to the MWU office-bearers who were allegedly dismissed or forced to resign, the Government indicates that the Department of Labour of Haryana conducted a detailed record-based inquiry and as per the report provided the following indications:

– Mr Ashok Kumar, MWU General Secretary, is still employed in the company and was also given a promotion;

– Mr Sherwan Kumar, MWU Vice-President, had taken his full and final dues on 12 February 2013. He later joined the company again and is still working there;

– Mr Brijesh Kumar is still working with the company and there is no issue or complaint;

– Mr Rajendra Prashad, who is alleged to have been dismissed on 24 January 2013 had been working until 23 November 2013 as per the records of the company. He then left the job voluntarily and has also received his final dues;

– Mr Bramhanand Bhuvan (spelt as Bhuyan in the CFA conclusions), MWU Organizing Secretary, has voluntarily left service, taking his full and final dues. He did not lodge any complaint alleging victimization after leaving his service;

– the services of Messrs Ramnath, Ashuthosh Yadav and Shishpal are alleged to have been terminated on 24 January 2013, whereas Mr Ramnath worked until 8 January 2014, Ashutosh Yadav until 25 November 2013 and Shishpal until 13 April 2015. They all voluntarily left their jobs and took full and final payment. They did not lodge any complaint afterwards, hence the allegations concerning them are false;

– Mr Manoj Kumar Singh, MWU Joint Secretary, left the service voluntarily on 12 February 2013. He later joined the company again and worked there until 21 July 2014. He did not lodge any complaint;

– Mr Murari Prasad left the service voluntarily on 12 January 2013, rejoined the company on 1 May 2013, and finally resigned on 24 July 2014;

– Mr Pramod Kumar was found to have left the service voluntarily in August 2013;

– Mr Ranjeet Kumar, allegedly dismissed on 28 January 2013, worked in the unit until 13 December 2014. He left the service voluntarily on 24 August 2013;

– Ms Manju Devi, allegedly dismissed on 28 January 2013, worked in the unit until 13 December 2014, when she left the service voluntarily;

– Mr Vinod Kumar, MWU Treasurer, left his service voluntarily on 13 August 2015 and did not lodge any complaint.

The Government states that it is clear from the facts given above – obtained from the statutory records of the unit – that the workers were employed in the unit and some are still working there. The allegations of victimization are baseless, unfounded and mala fide. The Government further emphasizes that none of the workers made any complaints regarding any type of victimization before any authority of the state and the Labour Department did not receive any complaint of dismissal or forced resignation.

379. With regard to the allegations of large-scale dismissals and forced resignations of around 200 trade union members, the Government indicates that the Additional Deputy Commissioner, Gurgaon-cum-Additional Labour Commissioner (NCR), Government of Haryana was assigned to conduct an independent inquiry. The officer duly heard both parties and also constituted a team of officers to check the statutory record of the establishment to verify the averments of the management during the hearing. The independent committee observed that there was no abnormal increase in the number of workers leaving their jobs in the years 2013–15. The trend is the same as in 2011 and 2012. Most of the workers in the garment industry are migrant and return to their native places during the season of crops and festivals. They submit their resignation and receive full and final settlements and then return and join afresh the company they previously worked with or a new one. The Government further indicates that even though the Garments and Allied Workers Union of India (GAWU) were specifically asked to submit a list of names of the workers who were made to forcefully resign by the management, they could not provide such a list. In the absence of such a list the independent committee could not find any evidence of the alleged forceful resignation or dismissal of 200 workers. The independent committee further observed that no related industrial dispute is pending under the Industrial Disputes Act, 1947, and some workers named in the complaint are still employed in the establishment and a few have even been promoted to senior positions. Since large numbers of workers who frequently resign are paid their legal dues and none of them have come forward to make any claim, the independent

committee has observed that it cannot be concluded that there is a specific case of victimization for attempt to form a union.

380. The Government has also attached a copy of the report of the independent inquiry to its observations that provides some details of the investigation directed by the Additional Deputy Commissioner, Gurgaon-cum-Additional Labour Commissioner (NCR), into the allegations of mass dismissals and forced resignations in the company. The report indicates that the management of the company and the General Secretary of the union were called to the Commissioner's office along with their respective records. Both parties were heard. The Commissioner together with officers of the Labour Department visited the premises of the company to inspect the records on-site. After hearing both parties and inspecting the relevant records, the Commissioner observed that the union was asked to provide the details of the 200 members who were allegedly dismissed or made to resign – names, employee ID number and date or month of dismissal or forceful resignation. The Secretary-General of the union said that he could not provide the above details as a considerable time had elapsed since those events. The management denied all allegations of large-scale dismissals or forceful resignations of trade union members at any time.

381. The report of the independent inquiry further indicates that it was found through the inspection of the records that 834 workers left their jobs in 2011, 815 in 2012, 546 in 2013, 707 in 2014 and 745 in 2015. Thus, the Commissioner observes, there is no abnormal increase in the number of workers leaving their jobs in 2013, 2014 or 2015. The trend is the same as in 2011 and 2012. In fact more workers left their jobs in 2011 and 2012 than in the following years. The report considers noteworthy the fact that the MWU submitted its application for registration on 19 December 2012. Would there have been any mass dismissals or forced resignations after submission of the application, it should have been reflected in the abnormal increase in the number of workers leaving their jobs in 2013 itself or the two following years, while as explained above this is not the case. Moreover the Labour Department did not receive any complaints alleging dismissal or forceful resignation during this period. The report concludes that, in view of the above, no evidence of forceful resignation or dismissals of 200 trade union members was found. The Labour Commissioner finally states that due to the seasonal nature of the industry, a large number of workers leave their jobs every year to go back to their native place for other seasonal employment. Such a large turnover of workers indicating a high attrition rate over the years does not indicate any victimization in a particular year, as has been alleged.

382. With regard to the Committee's recommendation that the Government take the necessary measures to encourage a climate where trade union rights can be freely and safely exercised, the Government indicates that India has ratified Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and that social dialogue and tripartism are hallmarks of India's labour policy discourse. The Management of Modelama Exports Pvt. Ltd have established different channels to register/express the issues of their employees and a works committee, elected democratically by the workers, is also in place where the grievances of the workers are solved.

383. With regard to the allegations indicating why the Labour-cum-Conciliation Officer did not take any action in response to the complaints of illegal dismissal and unfair labour practices, the Government indicates that no complaint regarding illegal dismissal or forced resignation was received by the Deputy Labour Commissioner concerned or any competent authority. The Government however admits that some other workers were terminated on grounds of indiscipline and they raised individual disputes, all of which were duly transferred to the competent Labour Court for adjudication. The report of the independent inquiry, also indicates in this regard that the findings of the inquiry and the government records show that the representatives of workers have never presented any complaint or raised a dispute under section 2-A of the Industrial Disputes Act, 1947, to contest or seek redress against the alleged illegal termination of the workers mentioned in the complaint presented to the CFA.

Therefore, the Government of Haryana considered that it would be incorrect to allege that no action was taken against the management in this regard.

384. With regard to the MWU application for registration, the Government indicates that it has been informed that the general body of the union approved its name and constitution by a decision dated 17 June 2012 and, through another decision dated 22 June 2012, authorized ten applicants to submit the application for its registration, which they did. According to rule 4.1 of the constitution of the union, any worker employed in any capacity in any unit of the company in Haryana or all over India can become an ordinary member of the union provided that he or she pays the requisite admission and subscription fee. According to the Government, as four of the applicant workers resigned, one expressed in writing his lack of interest in the formation of the union and another one was an outsider, six out of ten applicants (more than half) ceased to be members of the union. Consequently, the registration application became invalid as per the provisions of section 4(2) of the Trade Unions Act 1926 read with rule 4.1 of the constitution of the union. Therefore the application for registration of the union was declined. The Government further adds that after the rejection of the application, the Registrar cannot review his own decision and the appropriate remedy for the workers is to file an appeal under section 11 of the Trade Union Act, 1926, before the Labour Court or to submit a fresh application for registration. According to the Government submission, the workers have not filed any appeal before the Appellate Court nor submitted a fresh application for registration of their trade union. The complaint is therefore an attempt to bypass the judicial process of the nation and unnecessarily obfuscate the issue.

385. In response to the Committee's request to obtain, through the relevant employers' organization, information from the enterprise on the questions under examination, the Government submits the observation of "Apparel Export Promotion Council (AEPC)". The AEPC, which defines itself as the official body of apparel exporters in India indicates that it has not received any complaint directly or indirectly against the company in recent times. The company has been running professionally while keeping the interest of its employees and that is the reason why they are in the industry for over 38 years. They maintain a good track record with their foreign buyers and local vendors and are always on the forefront of boosting the export business and thus creating more employment opportunities. The company has training centres all over the country for illiterate workers and helps mould them for a suitable job in the industry. The AEPC finally concludes with the statement that many states like Jharkhand and Orissa are extending all sorts of assistance to reputed exporters for setting up garment industries in their states so that employment opportunities are created there. It is therefore in the interest of all government bodies in Delhi and Delhi-NCR to extend all possible assistance to such exporters so that they carry out their operations smoothly.

C. The Committee's conclusions

386. *The Committee recalls that this case concerns allegations of acts of anti-union discrimination, as well as refusal of registration of MWU by the Registrar of trade unions in the state of Haryana, bearing in mind that the acts of anti-union discrimination – notably dismissals of union members – allegedly took place only weeks after the request for registration and hence could have an impact on the registration of the trade union.*

387. *The Committee notes the information submitted by the Government. With regard to the allegations of dismissal and forced resignation of 16 union office-bearers, the Committee notes the Government's indication that the Government of Haryana conducted a detailed record-based inquiry which revealed that Messrs Ashok Kumar (the General Secretary of the union) and Brijesh Kumar are still working in the company; that Messrs Sharwan Kumar (Vice-President of the union) and Manoj Kumar Singh (Joint Secretary of the union) both*

left the service voluntarily on 12 February 2013 but then joined the company again later. Mr Murari Prasad left the service voluntarily on 12 January 2013, rejoined on 1 May 2013 and left again later. The Government further provides indications with regard to ten other union officials who accordingly left the service voluntarily at various dates in 2013, 2014 and 2015. The Committee recalls in this regard that the complainant alleged that it was part of a written agreement between the management and the union that 14 out of 16 union officials dismissed or transferred in January and February 2013 resumed their duty, but that this arrangement did not last later than June 2014 and in the months following June 2014 around 200 trade union leaders and members were either forced to resign or were illegally terminated [see 380th Report, para. 551]. The Committee finally notes that the Government does not provide any indication with regard to the status of Messrs Brijesh Prasad – allegedly dismissed on 24 January 2013 – and Hem Narayan Jha (Publicity Secretary of the union) who was allegedly transferred to a different unit on 15 January 2013.

388. *Recalling that it had requested the Government to ensure that the State of Haryana carries out an independent inquiry to determine whether the dismissals or forced resignations of the union officials were due to their trade union activity, the Committee notes that the indications provided by the Government are based on a "detailed record-based inquiry". The Committee notes that, with regard to Messrs Sharwan Kumar and Manoj Kumar Singh, the Government indicates that according to the records they left service voluntarily on 12 January 2013, whereas the complainant had alleged that they were individually called to the office of the human resources manager where they were surrounded by ten to 12 people, including security forces, and were forced to sign resignation and transfer letters and provide their fingerprints, while being told that they were dismissed because they were union leaders [see 380th Report, para. 548]. The Committee considers that, in view of the contradictory nature of the information, only an independent investigation with the direct engagement of the persons concerned would have enabled the Government to determine whether the allegations of anti-union dismissal and forced resignation were founded. Taking into account the contradictory information, but also the time that has elapsed, the apparent absence of use of the national procedures and the lack of any additional information from the complainant since the Committee's last examination of the case, the Committee invites the complainant to bring forward any remaining claims it still may have to the State of Haryana for a full review in order to determine whether these allegations were founded.*

389. *With regard to the allegations of large-scale dismissals of 200 trade union members in 2014, the Committee notes the Government's indications as to the independent inquiry conducted by the Labour Commissioner. It notes in particular that the Labour Commissioner has heard both parties in addition to the examination of the records of the establishment, that no abnormal increase in the number of the workers leaving their jobs was noticed, that the GAWU could not provide a list of names of the workers concerned and that in the absence of such a list no evidence of the alleged anti-union dismissals could be found. In this regard the Committee recalls that the complainant had attached to the complaint a list of names and dates of termination of 60 MWU members who were allegedly illegally terminated in 2014 and 2015. The Committee also understands that labour turnover is high in the garment industry and in the absence of evidence it is hard to establish the facts with regard to the real motives behind the terminations. In view of the divergence between the statement of the Government and the allegations of the complainant, the Committee is not in a position to determine that these dismissals were for anti-union motives.*

390. *With regard to the allegation of lack of action on the part of the authorities in response to the complaints of illegal dismissal and unfair labour practices, the Committee notes the Government's indication that no such complaints were received by the Deputy Labour Commissioner concerned or any other competent authority, but that some workers who were terminated on grounds of indiscipline raised individual disputes which have been referred to the competent Labour Court for adjudication. The Committee however recalls the complainant's allegation that the union filed several complaints to the Office of*

Labour-cum-Conciliation Officer, Circle-1, Gurgaon dated 9 January 2013 and 28 February 2013 but no action was taken by the Labour Department on the continuous complaints of illegal and forced termination and unfair labour practices [see 380th Report, para. 548]. In light of the information available to it, the Committee can only recall 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 [see ***Digest of decisions and principles of the Freedom of Association Committee,*** *fifth (revised) edition, 2006, para. 820], and requests the Government to ensure respect for this principle.*

391. *With regard to the registration of the MWU, the Committee notes the Government's indication that the Registrar cannot review his own decision and the workers must either file a judicial appeal or submit a fresh application for registration. The Committee further notes the Government's statement that the present complaint is an attempt to bypass the judicial process of the nation. With regard to the latter statement, the Committee reminds the Government that the purpose of the procedure of the Committee is to promote respect for trade union rights in law and in fact; that the right to official recognition through legal registration is an essential facet of the right to organize, since that is the first step that workers' or employers' organizations must take in order to be able to function efficiently; and that although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see* ***Digest****, op. cit., paras 3, 295 and Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association – Annex I of the* ***Digest****, para. 30].*

392. *With respect to the grounds for the refusal to register the union, the Committee notes that according to the Government's indications, the Registrar has interpreted rule 4.1 of the constitution of the union providing that any worker in the company can become a member as meaning that by virtue of their resignation from the company, the workers who had applied for registration had ceased to be members of the union. The complainant on the other hand, maintained that the management had forcefully terminated the union leaders who had applied for registration. In its previous examination of this case, the Committee had requested the Government to ensure that the State of Haryana re-examines the application for registration fully taking into account all the documents submitted to the Registrar and duly bearing in mind the allegations of anti-union discrimination only weeks after the request for registration. The Committee notes the Government's indication that the Registrar cannot review his own decision, but that the applicants can file a judicial appeal or submit a new application for registration. Considering that in the absence of official recognition the union cannot function efficiently, the Committee invites the complainant to submit a new application should it still so desire and expresses its firm expectation that any new application submitted by the union will be examined promptly, with due consideration of the principles of freedom of association referred to above.*

The Committee's recommendations

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

(a) Taking into account the contradictory information, but also the time that has elapsed, the apparent absence of use of the national procedures and the lack of any additional information from the complainant since the Committee's last examination of the case, the Committee invites the complainant to bring forward any remaining claims it still may have to the State of Haryana for a

full review in order to determine whether the allegations of anti-union dismissal and forced resignation were founded.

(b) The Committee invites the complainant to submit a new registration application should it still so desire and expresses its firm expectation that any new application submitted by the union will be examined promptly and with due consideration of the principles of freedom of association referred to in its conclusions.

CASE NO. 3124

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

Complaint against the Government of Indonesia presented by the Federation of Indonesian Trade Unions (GSBI)

Allegations: The complainant organization alleges dismissal of trade union leaders, restriction on the exercise of the right to strike by using police and paramilitary force on striking workers, dismissal of trade union members and other workers for having participated in a strike and the employer's interference in trade union affairs by intimidating workers to change their trade union affiliation in favour of a union supported by the management

394. The Committee last examined this case at its October 2016 meeting, when it presented an interim report to the Governing Body [see 380th Report, paras 562–589, approved by the Governing Body at its 328th Session].

395. The Government provided its observations in a communication dated 6 March 2017.

396. The complainant provided additional information in a communication dated 12 June 2017.

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

A. Previous examination of the case

398. At its October 2016 meeting, the Committee made the following recommendations [see 380th Report, para. 589]:

(a) Welcoming the Government's detailed response, the Committee requests it to take the necessary measures to conduct an independent investigation into the allegations of the use of police and other forces on striking workers. It requests the Government to inform it of the outcome of the investigation, including any measures taken as a result, and trusts that

the Government will take the necessary measures to ensure that police, security and other forces are not used for strike-breaking purposes and that any intervention during strikes or industrial actions is strictly limited to situations where law and order are seriously threatened, in line with the principles set out in its conclusions.

(b) In light of the abovementioned principles and the large-scale termination of striking workers, the Committee requests the Government to take the necessary measures to initiate an independent inquiry to address the allegations of anti-union termination of 1,300 workers and to determine the real motives behind these measures and, should it be found that they were terminated for legitimate trade union activities, take the necessary measures to ensure that the workers are fully compensated, if indeed reinstatement is not possible due to the company's closure. The Committee requests the Government to keep it informed of any developments in this regard.

(c) The Committee requests the Government to provide a copy of the reports of the investigation into the alleged acts of intimidation of Kokom Komalawati. The Committee urges the Government to provide its observations on the specific allegations of interference in trade union affairs by forcing workers to change their trade union affiliation in favour of a trade union supported by management. The Committee expects that the Government will take the necessary measures to ensure that any acts of employer interference in trade union affairs are properly identified and remedied and, where appropriate, that sufficiently dissuasive sanctions are imposed so that such acts do not reoccur in the future.

(d) Bearing in mind the complex nature of the case and the multitude of interconnected allegations (deficiency in wage payment, dismissal of trade union leaders following the establishment of a union, restriction on the exercise of the right to strike, termination of employment after having participated in a strike and interference in trade union affairs), the Committee trusts that the investigations to be conducted will look at these incidents as a whole with a view to properly reflecting the circumstances of this case.

B. The Government's reply

399. In its communications dated 6 March and 20 September 2017, the Government states that implementation of the right to organize and express opinions in public, together with the right to strike, are protected by the Government as long as they are in accordance with the procedures and mechanisms provided by national legislation, uphold the rights and dignity of other parties and do not disturb public security and order. The Government indicates that it had conducted an investigation into the allegations of the use of force on striking workers in July 2012 by requesting information from the police and the management of the garment group – parent company of the garment enterprise where the strike took place. The results of the investigation show that the July 2012 collective action did not comply with the applicable procedures and mechanisms as the workers had neither submitted prior notice of their actions to the police, as stipulated in Act No. 9 of 1998 relative to freedom of expression in public, nor to the Manpower Office of the city of Tangerang in Banten Province, as stipulated in Act No. 13 of 2003 concerning manpower. The Government further states that the Head of Indonesian Police Regulation No. 1 of 2005 stipulates that police may be present in the area of industrial disputes, strikes, demonstrations or lockouts if demanded by the department responsible for manpower, worker or labour union, employers or employers' organization or by judgement of the police, and its placement is intended to provide protection and assistance in maintaining public security and order and allow workers and employers to implement their right to strike and protect or close the company legally, orderly and peacefully. In line with this Regulation, the police was present at the strike following a verbal report on its occurrence by the company management and its presence was necessary given that the striking workers were accompanied by a community organization (Badan Pembina Potensi Keluarga Besar Banten – BPPKB), carried out acts of intimidation and violence towards workers who did not participate in the strike and damaged company property. In such a state of anarchy and disturbance to public order, the police took measures to disperse the striking workers in line with the above Regulation and, at the same time,

urged pregnant women and elderly workers to avoid the site of action but this warning was not heeded. The Government thus considers that, based on the investigation results, the police was present at the strike site for the sole purpose of maintaining public security and order and the alleged fainting incident and minor injuries to workers were the result of jostling among strike participants.

400. The Government further states that the dismissals of company workers were solely motivated by the difficult financial situation of the company, as confirmed by the audits from 2009–11 and the company's closure in 2014. In line with the Industrial Relations Dispute Settlement Act No. 2 of 2004, which provides for dispute resolution through bipartite negotiations, mediation, conciliation, arbitration and the Industrial Relations Court, various efforts were made by the Government to resolve the case. In January 2017, the Government facilitated a meeting between the management of the parent company and the workers, represented by Kokom Komalawati and representatives from the complainant, in order to discuss the settlement for the dismissed workers whose rights have not yet been paid. The management of the parent company consented to paying the dismissed workers and both parties agreed to resolve the issue through deliberation facilitated by the Manpower Regional Office in Tangerang. To this effect, two meetings took place on 23 and 30 January 2017, during which it was agreed that negotiations relative to the unresolved issues of company workers would be conducted once a week, both sides would respect the other's rights and if any issues remained unresolved after two months, they would be returned to the Ministry of Manpower and its Regional Office in Tangerang. The negotiations also permitted to verify and clarify data as to the number of workers concerned (339 according to the parent company and 346 according to the workers' representatives) and organize further meetings in February and March 2017, some facilitated by the Government and others at which the Department of Labour was not requested to participate. The Government informs, however, that the negotiations did not result in any agreement between the parties, which could in particular not agree on the amount of lay-off compensation. In April and May 2017, the Government thus offered both parties to immediately file their cases to the local Manpower Office in Tangerang for mediation, but the complainant rejected the offer and the employer did not reply. To date, the Government is awaiting for one or both parties to file their cases to the local Manpower Office pursuant to the Industrial Relations Dispute Settlement Act.

401. Concerning the allegations of intimidation, the Government reiterates that the right to organize is protected by national regulations, particularly section 28 of Act No. 21 of 2000 on trade union/workers' union, which stipulates that everyone is prohibited from preventing or forcing a worker to form or not to form a trade union, become or not become a union official or member and carry out trade union activities, by means of dismissal, suspension, demotion, transfer, reduction of wages, intimidation and campaigning against the establishment of trade unions. The breach of this section is criminally sanctioned by one to five years of imprisonment and a fine of 100,000,000 to 500,000,000 Indonesian rupiah (IDR), in line with section 43 of the same Act. The Government further informs that, based on a police investigation into the alleged violations of the right to organize of Ms Komalawati, the police issued a Warrant Termination of the Investigation due to insufficient evidence. With regard to the alleged acts of interference in trade union affairs by forcing workers to join a management-supported trade union, the management of the parent company stated that the local company was neither involved in the formation of the Independent Workers' Union (SPI) nor did it oblige workers to become its members. Furthermore, the Government indicates that these issues have not yet been submitted or reported to it and, therefore, suggests that the complainant should submit evidence on this charge to the police or the Ministry of Labour and Manpower in Tangerang, who are authorized to resolve national labour issues. The Government adds that, according to the parent company, some workers also complained about acts of intimidation conducted by the company trade union (PTP SBGTS-GSBI PT PDK), as well as obstruction to join the SPI and to work during the union-declared strike.

402. In conclusion, the Government indicates that the Ministry of Labour, the Manpower Office of Tangerang City and the Tangerang City Police Department conducted an investigation into the issues raised in this case (lack of payment of wages, dismissal of union leaders after formation of a trade union, limitation on the right to strike, termination of employment after participation in strike and interference in trade union affairs) and concluded that these issues did not constitute a violation of Conventions Nos 87 and 98, as the allegations submitted by the complainant were found not to have violated Act No. 21 of 2000 on trade union/workers' union or Convention No. 87. The Government adds that employment issues started when the company suffered financial losses, which resulted in the suspension of the minimum wage and dismissal of workers, including trade union leaders, which in turn led to a strike. However, according to the Government, both the suspension of the minimum wages and the dismissals were done in accordance with the applicable procedures, including through negotiations with workers' representatives, as demonstrated by minutes of a bipartite meeting (attached), and were implemented prior to the registration of the workers' organization. The Government indicates that while employment issues have not yet been fully resolved, it has taken steps to settle these issues through deliberation between the management of the parent company and the workers' representatives.

403. Concerning the complainant's additional information, the Government affirms that every citizen is free to express their opinion in line with Act No. 9 of 1998 on Freedom of Expression in Public, which stipulates that, with a few exceptions, rallies can be conducted in a public place, and Head of National Police Regulation No. 7 of 2012 on Implementation Procedures of Service, Security and Handling of Cases of Expressing Opinion in Public Area, which regulates the location and time of rallies. The Government explains, however, that the rallies conducted by the complainant on Sundays cause inconvenience and interrupt activities of the local population, such as a car-free day. In addition, every citizen has the right to rest peacefully and comfortably on holidays and weekly rest days and the complainant's demonstrations thus violate article 28 J of the Indonesian Constitution, which states that every citizen should respect the human rights of others in the orderly life of society, nation and State. Since there is no regulation at the national level to ensure convenience, public order, protection of people and respect for the rights and freedoms of others during rallies, local governments can set technical implementation rules to this effect. The Municipal Regulation No. 2 of 2017 thus stipulates that rallies can only be conducted during work days and not during weekly rest days.

404. With regard to the presence of police during one of the complainant's rallies in April 2017, the Government indicates that its role was to maintain public order and security given the massive assembly. The Government further states that a police investigation was conducted into the allegations of violence by a member of the Tangerang City Police, including through examination of witnesses (representatives of the police, Ms Komalawati and another trade union representative) and found that although there was no slapping, the police officer covered the mouth of one demonstrator because she was emotionally expressing her speech and spitting, which was degrading to the police dignity. This action was nevertheless considered to be in breach of the police code of conduct and in June 2017, upon completion of the investigation and trial, the police officer was issued a disciplinary punishment in the form of written reprimand.

C. Additional information from the complainant

405. In its communication dated 12 June 2017, the complainant states that the Central Executive Board of the Federation of Indonesian Trade Unions (DPP GSBI) and the company trade union met with the Government on 19 December 2016 but that the Government has not taken any serious action to implement the Committee's recommendations, with the exception of encouraging the parent company and the workers to negotiate in order to settle the rights of workers that have been unilaterally dismissed. In this regard, the complainant indicates that

on 12 January 2017, a first meeting was held between the workers' representatives, the management of the parent company, the Labour Department of Tangerang City and representatives from the Department for Industrial Relations and Social Security of the Ministry of Manpower, who agreed that, under the direct coordination of the Head of the Labour Department of Tangerang City, the case would return to the negotiation process starting from 23 January 2017 for a period of two months. The complainant further states that despite five meetings held during this period, the negotiations led to a deadlock with no agreement, the parent company kept the same attitude as in the past five years and the Government did neither seek a solution nor take any active role in resolving the case. For instance, during the third meeting of the parties, representatives of the Labour Department of Tangerang City were only present to open the meeting after which the negotiation process was left to the workers' representatives and the parent company, and representatives of the Ministry of Manpower only took notes without being actively involved. Since the two-month period did not result in any agreement, on 11 April 2017, the Ministry of Manpower offered to settle the case through mediation and the Industrial Relations Court, in line with the Industrial Relations Dispute Settlement Act, but the complainant and the leaders of the company union rejected this proposal, considering that the period agreed for the legal process had to be followed, and instead urged the Government to comply with the Committee's previous recommendations.

406. The complainant further states that in January 2017, the Mayor of Tangerang City issued a Municipal Regulation No. 2 of 2017 on the implementation of public opening in Tangerang City, section 12(2)(b) of which prohibits the community to rally, campaign or parade on Saturdays and Sundays. The complainant believes that this Regulation is contrary to Act No. 9 of 1998 on freedom of public opinion and was implemented to prevent picket lines and peaceful campaigns that have been conducted by company workers every Sunday morning for the past year in order to gather public support for the workers' struggle and urge the local government to resolve the five-year-long case. During one such demonstration on 9 April 2017, a Sunday morning, the Secretary-General of the DPP GSBI was slapped by a Tangerang City police officer, which shows that not only did the Government not solve the pending issues of the case, but it also allowed violence to be once again perpetrated against workers of the parent company.

D. The Committee's conclusions

407. *The Committee notes that the present case concerns allegations of dismissal of trade union leaders, restriction on the right to strike by using police and paramilitary force on striking workers, dismissal of trade union members and other workers for having participated in a strike and interference in trade union affairs by intimidating workers to change their trade union affiliation in favour of a union supported by the management.*

408. *With regard to the allegations of the use of police and other forces on striking workers in July 2012 (recommendation (a)), the Committee observes from the information provided that the complainant and the Government have opposing views on a number of elements, including the affiliation of the paramilitary groups present at the strike site and the source of violence and injury to the workers. While the complainant states in its initial complaint that the striking workers were confronted with a violent intervention by the security, police and paramilitary groups who used force and tear gas against them, causing fainting or injury to 34 workers, the Government indicates that information provided by the police and the parent company shows on the one hand, that the workers' strike was not in compliance with the applicable procedures, as no prior notice had been issued to the competent authorities and, on the other hand, that the police was present at the strike site following a request made by the company management, in line with the applicable regulations, for the sole purpose of maintaining public security and order, considering that the striking workers were accompanied by a community organization and carried out acts of violence,*

*intimidation and destruction of company property. The Government also maintains that any minor injury to workers was caused by the jostling among the strike participants and not by the police. In these circumstances, the Committee must emphasize once again that while the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 667], freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Digest**, op. cit., para. 43].*

409. *The Committee further notes that, as indicated by the Government, an investigation had been conducted into the allegations of the use of force against the striking workers, but understands that this process simply consisted of requesting information from the parent company and the police, who are, according to the complainant, the main actors behind the alleged infringements. The Committee considers that such an investigation is at risk of not producing the most impartial and objective results and recalls that in the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see **Digest**, op. cit., para. 50]. Further observing the complainant's indication that, in April 2017, the police once again used force against a worker during a peaceful demonstration, the Committee notes the Government's statement that an investigation had been conducted into these allegations and although it was found that no violence had been used, the police officer was nevertheless reprimanded for not having performed his duty in line with the police code of conduct.*

410. *Further noting the complainant's concern that the adoption of the new Municipal Regulation No. 2 of 2017 purposefully restricts the company workers' peaceful campaigns aimed at expressing their concerns as to the long-standing nature of this case, the Committee observes that according to the Government, the Sunday rallies conducted by the complainant cause inconvenience and interrupt activities of the local population, as every citizen has the right to rest peacefully and comfortably on weekly rest days, and local governments are competent to regulate this aspect of freedom to express opinions in public. Recalling in this regard that workers should enjoy the right to peaceful demonstration to defend their occupational interests and that a time restriction placed by legislation on the right to demonstrate is not justified and may render that right inoperative in practice [see **Digest**, op. cit., paras 133 and 149], the Committee considers that a Ministerial Regulation which totally restricts demonstrations throughout the weekends, as alleged in this case, would seriously impede the exercise of this right. The Committee requests the Government to provide a copy of the Municipal Regulation and expects it to take the necessary measures to ensure that all workers may exercise their right to peaceful demonstration in line with the principles of freedom of association.*

411. *Concerning the allegations of large-scale dismissals (recommendation (b)), the Committee recalls that the complainant alleged two different sets of dismissals – one occurring in February and March 2012, at the time of registration of the company trade union, and mostly concerning trade union leaders, and another one following the July 2012 strike, in which around 1,300 workers were affected. The Committee notes the Government's indication that the only ground for dismissal of company workers was the difficult financial situation of the company, the dismissals were done in accordance with the applicable procedures and were implemented prior to the registration of the workers' organization. The Committee observes that this information appears to refer to the first set of dismissals, as both the Government and the employer representatives have previously informed that those dismissals were conducted in the framework of staff reduction programmes between February and July 2012, while claiming that dismissals following the July 2012 strike were justified by the workers'*

prolonged absence from work and refusal to obey the company's appeal to work [see 380th Report, paras 572–573 and 577–578].

412. *The Committee further notes in this regard the information provided by both the Government and the complainant that in January 2017, the Government facilitated a meeting between the parent company and the workers' representatives, who agreed to resolve the issue of the dismissed workers whose rights have not yet been paid through negotiation during a period of two months. The Committee welcomes these recent efforts but observes that both the Government and the complainant indicate that after five meetings between the parties, the negotiations led to a deadlock with no agreement. While further noting the complainant's allegations that the Government did not take any active role in resolving the case, the Committee also observes, however, that the Government facilitated a number of meetings and bipartite negotiations and that when the Ministry of Manpower, after expiration of the two-month period, offered to settle the case through mediation and the Industrial Relations Court, this proposal was refused by the complainant and not acknowledged by the employer and, to date, neither of the parties filed their case to the local Manpower Office for resolution. In these circumstances, the Committee cannot but regret that more than five years after the events, the dispute remains unresolved and hundreds of workers still await compensation. The Committee further observes that it is unclear from the information provided to which set of dismissals the negotiations refer (dismissals having occurred around the time of registration of the company trade union or dismissals following the July 2012 strike, or both), but considers that in either case, negotiations can, presupposing good faith of the parties, significantly contribute to an amicable resolution of the dispute. The Committee invites the parties to present a formal request for mediation in relation to the issue of dismissed workers to the local Manpower Office.*

413. *Further observing that the Government failed to provide any information on whether an independent inquiry had been conducted into these allegations of large-scale termination of workers following the July 2012 strike and recalling that dismissals of strikers on a large scale involve serious risk of abuse and place freedom of association in grave jeopardy, the Committee requests the Government once again to take the necessary measures to initiate an independent inquiry to address these allegations and to determine the real motives behind these measures and, should it be found that the workers were terminated for legitimate trade union activities, take the necessary measures to ensure that they are fully compensated. The Committee firmly hopes that the Government will be able to report progress in this regard without further delay.*

414. *As regards the allegations of interference in trade union affairs and intimidation of workers (recommendation (c)), the Committee observes from the information and documents provided by the Government that the investigation into the alleged infringements of trade union rights of Ms Kolamawati was closed due to insufficient evidence, that the parent company contests the allegations that the local company interfered in trade union affairs or intimidated workers to become members of the newly created management-supported trade union, that the latter allegations have not yet been reported to the competent authorities and that, according to the parent company, acts of intimidation were also perpetrated by the company trade union against workers who did not participate in the union-declared strike or wanted to join the new trade union. Expressing concern at the allegations of interference and intimidation from both sides and in view of the Government's indication that some of the allegations have not yet been reported to it, the Committee invites the complainant to provide to the competent national authorities detailed information concerning the allegations of interference in trade union affairs by forcing workers to change their trade union affiliation in favour of a management-supported trade union, so that they can conduct an investigation and determine whether these allegations are founded, and if so, to take the necessary measures to remedy and sanction these acts. The Committee requests the Government to keep it informed of any developments in this regard.*

415. *Finally, the Committee notes the Government's general indication that the Ministry of Labour, the Manpower Office of Tangerang City and the Tangerang City Police Department conducted investigations into the issues raised in this case (deficiency in wage payment, dismissal of trade union leaders following the establishment of a union, restriction on the exercise of the right to strike, termination of employment following participation in a strike and interference in trade union affairs) and concluded that these employment issues did not constitute a violation of national legislation or Conventions Nos 87 and 98 and that, although the employment issues have not yet been fully resolved, the Government has taken steps to settle them through deliberation between the parent company and the workers' representatives. While taking due note of this indication and welcoming the Government's initiative to encourage negotiations among the parties and to obtain information on the relevant issues from the police and the parent company, the Committee considers that in view of the complex nature of the case, the large numbers of workers concerned, and the multitude and serious nature of interconnected allegations, some of which were not contested either by the Government or the employers' representatives, such measures would be insufficient in the absence of an independent investigation aimed at establishing the facts. Therefore, the Committee requests the Government to take the necessary measures to ensure that all pending matters are dealt with without further delay and in line with the Committee's recommendations and to report in detail on any measures taken or envisaged in this regard.*

The Committee's recommendations

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

(a) The Committee requests the Government to provide a copy of the Municipal Regulation No. 2 of 2017 and expects it to take the necessary measures to ensure that all workers may exercise their right to peaceful demonstration in line with the principles of freedom of association.

(b) The Committee requests the Government once again to take the necessary measures to initiate an independent inquiry to address the allegations of anti-union termination of hundreds of workers following the July 2012 strike and to determine the real motives behind these measures and, should it be found that the workers were terminated for legitimate trade union activities, take the necessary measures to ensure that they are fully compensated. The Committee firmly hopes that the Government will be able to report progress in this regard without further delay. The Committee also invites the parties to present a formal request for mediation in relation to the issue of dismissed workers to the local Manpower Office.

(c) The Committee invites the complainant to provide to the competent national authorities detailed information concerning the allegations of interference in trade union affairs by forcing workers to change their trade union affiliation in favour of a management-supported trade union, so that they can conduct an investigation and determine whether these allegations are founded, and if so, to take the necessary measures to remedy and sanction these acts. The Committee requests the Government to keep it informed of any developments in this regard.

(d) Bearing in mind the complex nature of the case, the large numbers of workers concerned, and the multitude and serious nature of interconnected allegations, some of which were not contested either by the Government or

the employers' representatives, the Committee requests the Government to take the necessary measures to ensure that all pending matters are dealt with without further delay and in line with the Committee's recommendations and to report in detail on any measures taken or envisaged in this regard.

CASE NO. 3081

INTERIM REPORT

Complaint against the Government of Liberia presented by the Petroleum, Oil, Chemical, Energy and General Services Union of Liberia (POCEGSUL)

Allegations: Unilateral cancellation by the employer of the collective bargaining agreement and unfair dismissal of trade union leaders

417. The Committee last examined this case at its October 2016 meeting, when it presented an interim report to the Governing Body [see 380th Report, paras 684–696, approved by the Governing Body at its 328th Session (October–November 2016)].

418. The Government sent its observations in a communication dated 8 November 2016.

419. Liberia 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

420. In its previous examination of the case in October 2016, the Committee made the following recommendations [see 380th Report, para. 696]:

(a) The Committee regrets that, despite the time that has elapsed since the complaint was last examined in October 2015, the Government has still not replied to the complainant's allegations, despite having been invited on two occasions to do so, including by means of an urgent appeal [see 378th Report, para. 9]. The Committee urges the Government to provide its observations on the complainant's allegations without further delay. It urges the Government to be more cooperative in the future.

(b) The Committee requests the Government to immediately conduct an independent inquiry into the complainant's allegations with regard to the unilateral cancellation of the CBA, and the employer's refusal to comply with the obligations established therein, and if these serious allegations were proved true, to take immediate measures to ensure that the employer abides by the commitments it has freely assumed, including deduction and payment of union dues in accordance with article 20 of the CBA and keep it informed of developments.

(c) Expressing its concern at the employer's alleged statements with regard to the remittance of union dues that would appear to undermine a CBA freely entered into, and at the impact that such statements might have on the exercise of trade union rights at the RIA, the Committee requests the Government to reply in full to these allegations.

(d) The Committee requests the Government to conduct an immediate inquiry into the grounds for Mr Weh and Mr Garniah's dismissal, and should it appear that they have been dismissed due to their trade union activities, including for actions in conformity with the CBA, which the employer is said to have unilaterally annulled, to ensure that they are

reinstated in their positions without loss of pay, or, if this is not possible, to provide adequate compensation. It requests the Government to keep it informed of developments.

(e) The Committee requests the Government to solicit information from the employers' organizations concerned, in order to have at its disposal their views as well as those of the enterprise concerned on the questions at issue.

(f) In more general terms, the Committee requests the Government to take the necessary measures as a matter of urgency to ensure full compliance with the freely concluded collective agreement and to ensure that the RIAWU can continue to fulfil its functions in representing the workers and defend their occupational interests without fear of intimidation or reprisal and to keep it informed of developments.

(g) Noting with concern that the complainant feels it is being targeted by the Ministry of Labour for its action before the ILO, the Committee emphasizes that workers' and employers' organizations should not be subject to retaliatory measures for having lodged a complaint with the Committee on Freedom of Association, and requests the Committee's Chairperson to meet with a representative of the Government of Liberia in order to express its deep concern over this allegation and the absence of cooperation with the Committee's procedures. It urges the Government to reply to each of the new allegations of the complainant without delay.

(h) With regard to the alleged wrongful dismissals of public sector workers' leaders during the period 2007–14, noting that the complainant did not furnish further details in this regard albeit requested to do so, the Committee will not pursue the examination of this allegation unless the complainant provides additional information.

(i) The Committee encourages the Government to consider availing itself of the technical assistance of the Office with a view to addressing the Committee's recommendations and strengthening the capacity of the Government and the social partners.

B. The Government's reply

421. In its communication dated 8 November 2016, the Government provided its observations. With respect to the alleged unilateral cancellation of the collective bargaining agreement (CBA), the Government states that the CBA was between Roberts International Airport (RIA) (hereinafter "the airport") and the National Brotherhood of Teamsters Union of Liberia (NBT). However, the workers of the airport subsequently disassociated themselves from the NBT. The Government attaches in this regard a copy of a letter from the Roberts International Airport Workers Union (RIAWU) to the Assistant Minister for Trade Union Affairs and Social Dialogue dated 11 April 2013 and signed by the Secretary-General of the RIAWU, Mr Jaycee Garniah, and approved by the President of the RIAWU, Mr Mellish Weh. The letter states that the RIAWU has disassociated itself from its mother union, the NBT.

422. The Government states in that respect that the workers informed the management that they no longer wanted the NBT to be their sole bargaining agent and that they were willing to negotiate for themselves. The Government states that under the Labour Practices Law (then in force) and Conventions Nos 87 and 98, the workers had the right to associate or to disassociate.

423. The Government asserts that the disassociation nullified the CBA. In that regard, the Government indicates that the CBA stated that the NBT shall be the implementer of the agreement, and shall be the sole bargaining agent of the workers of the airport. Based on the disassociation, the management refused to implement the CBA without a bargaining agent. The Government refers to article 49 of the CBA which states that:

(a) both parties recognize that the Agreement imposes serious duties and responsibilities on the union as well as the employer; and

(b) the union and the employer jointly confirm that the agreement shall become operative from the date of signature and will remain in force for three years after which it shall be deemed automatically extended for further periods of one year unless either party gives notice to the other at least three months in advance of its expiry date or date of extension, that it does not wish renewal.

424. With respect to the alleged unfair dismissal of trade union leaders, the Government states that the case is under probe within the Labour Standards Division of the Ministry of Labour. The Government indicates that the hearing of Mr Weh et al. has been delayed several times due to the absence of Mr Weh's counsel, and that the defendant's counsel (management of the airport) has requested a default judgment in its favour. The Government further states that it will not prejudice cases that are pending before a hearing officer and submits documents dated 27 October 2016 indicating that the request for a default judgement was denied.

425. The Government states that it is currently enforcing the Decent Work Act 2015, and that it is not targeting a specific workers' union by doing the following: regulating trade union activities; working in partnership with the national tripartite council; partnering with the Liberian Labour Congress on its reorganization and restructuring drive; and inspections. In addition, the Government recommends that in the future the ILO should liaise with the Government to ensure that all of the legal procedures and remedies were followed and adjudicated prior to the case being brought to the Committee for examination. The Government concludes by expressing its willingness to collaborate in ensuring compliance with the Decent Work Act, 2015, as well as Conventions Nos 87 and 98.

C. The Committee's conclusions

426. *The Committee recalls that this case concerns allegations of the unilateral cancellation by the employer of a CBA signed between the management of the airport and the workers' union; the anti-union dismissal of the President and the Secretary-General of the RIAWU; and interference in trade union affairs.*

427. *With regard to the Government's statement that the ILO should liaise with the Government to ensure that all of the legal procedures and remedies were followed and adjudicated prior to the case being brought to the Committee for examination, the Committee recalls that it had, on two occasions (June 2015 and May–June 2016), issued an urgent appeal to the Government requesting it to transmit its observations as a matter of urgency [see 375th Report para. 8 and 378th Report para. 9] and finally requested its Chairperson in, November 2016, to meet with a Government representative to express its concern and obtain the Government's views. In addition, the Committee wishes to recall that, although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, it has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, Annex I, para. 30].*

428. *With respect to the alleged unilateral cancellations of the CBA, the Committee notes the Government's indication that the CBA was between the airport and the NBT, and that the workers of the airport disassociated themselves from the NBT. It notes in this respect the Government's statement that the workers informed the management that they no longer wanted the NBT union to be their sole bargaining agent and that they were willing to negotiate for themselves.*

429. *The Committee takes note of the copy of the letter submitted with the Government's response, from the RIAWU to the Assistant Minister for Trade Union Affairs and Social Dialogue, dated 11 April 2013 and signed by the Secretary-General of the RIAWU, Mr Jaycee Garniah*

and approved by the President of the RIAWU, Mr Mellish Weh. The letter states that the RIAWU has disassociated itself from its mother union, the NBT. The Committee observes that the letter does not refer to the CBA, the bargaining agent for the RIAWU or new negotiations.

430. *The Committee notes the Government's assertion that the RIAWU's disassociation nullified the CBA, and it refers in this respect to article 49 of the CBA. The Committee notes, however, based on the complainant's submission, and the documents attached thereto, that the complainant considered the CBA to have remained in force in 2013 and 2014. The Committee notes that the CBA submitted with the complaint was signed on 6 December 2012 by seven persons. Three persons "on behalf of management" (the Acting General Manager of the airport and the Human Resource Manager of the airport, as well as the Managing Director of the Liberia Airports Authority), and four persons "on behalf of the union": "the president of the mother union", "the Secretary-General of the mother union", as well as Mr Weh as "President of the RIA Plant Union" and Mr Garniah as "Secretary-General of the RIA Plant Union". It notes that the preamble to the CBA states that the agreement between the management of the airport and the NBT shall cover all employees of the airport for whom the mother union (NBT) has been certified to negotiate. Article 2 of the CBA states that: (a) the duration of the Agreement shall be three years, commencing 2 January 2013 and ending 31 December 2015. Either party may give a 30 days written notice of its intention to terminate the Agreement at its expiration, and the notice must be issued at least two months prior to the expiration date of the Agreement; but until a new Agreement is signed between the two parties, this Agreement shall continue to be in effect as required under the Labour Laws of Liberia; (b) both parties to this Agreement will ensure compliance with the following standards set out in the current framework of national and international Convention laws. Article 49(a) provides that "both parties recognize that the Agreement imposes serious duties and responsibilities on the Union as well as the Employer" and article 49(b) states that "the union and the employer jointly confirm that the agreement shall become operative from the date of signature and will remain in force for three years after which it shall be deemed to be automatically extended for further periods of one year unless either party gives notice to the other at least three months in advance of its expiry date or date of extensions, that it does not wish renewal". The Committee also notes that the CBA also outlines certain obligations of the "plant union". It refers to "plant union activities" in article 32 on "plant union activities to be carried out during working hours" and article 33 of the CBA on "RIAWU responsibility" states that "two Executive Officers of the Union, namely the President and Secretary-General shall feasibly perform Union duties during working hours in order to reinforce and promote management policy, and protect workers' rights at the workplace …". The Committee observes that the CBA does not appear to contain provisions relating to disputes arising from its interpretation, or provisions relating to its cancellation, besides termination at its expiration.*

431. *The Committee wishes to recall 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 **Digest**, op. cit., para. 940]. Taking note of the apparent difference in interpretation concerning the CBA's application following disassociation of the RIAWU from the NBT, the Committee considers that disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions. As no procedure for settlement is established in the CBA, the Committee considers that this difference in interpretation on the impact of disaffiliation from the mother union on the application of the CBA should be resolved by an impartial mechanism, such as an independent judicial body.*

432. *Noting that based on the complainant's submission and the documents attached thereto the complainant considered the CBA to have remained in force in 2013 and 2014, the Committee invites the complainant to provide its observations on the information provided in the*

Government's communication relating to the disassociation of the RIAWU from the NBT and its understood effect on the CBA and to indicate whether it has had judicial recourse in this regard. The Committee again requests the Government to indicate the measures taken to ensure that RIAWU can continue to fulfil its functions in representing the workers and defending their occupational interests without fear of intimidation or reprisal.

433. *The Committee recalls that it previously expressed its concern at the employer's alleged statements with regard to the remittance of union dues and advising members of the union to hold trade union officials accountable for the dues already remitted, and at the impact that such statements might have on the exercise of trade union rights at the airport [see 376th Report, para. 724]. The Committee once again requests the Government to reply in full to these allegations.*

434. *With respect to the dismissals of Mr Weh and Mr Garniah, the Committee notes the Government's indication that the case of the dismissal of Mr Weh et al. is under probe within the Labour Standards Division of the Ministry of Labour. The Committee requests the Government to keep it informed of the outcome of the investigation by the Labour Standards Division of the Ministry of Labour into Mr Weh's dismissal. It further requests the Government to indicate whether Mr Garniah's dismissal is covered by the same investigation, and if not, to conduct an immediate inquiry into the grounds for his dismissal and keep it informed of developments. If it is found that Mr Weh and Mr Garniah were dismissed for the exercise of legitimate trade union activities, the Committee requests the Government to take the necessary steps to ensure that they are fully reinstated, without loss of pay. In the event that reinstatement is not possible, for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that they are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals.*

435. *Concerning the allegation of the ongoing denial of the right of workers to join POCEGSUL and the complainant's statement that it feels it is being targeted by the Ministry of Labour for its action before the ILO, the Committee notes the Government's statement that it is currently enforcing the newly enacted Decent Work Act 2015, and that it is not targeting a specific workers' union by regulating trade union activities; working in partnership with the national tripartite council; partnering with the Liberian Labour Congress on its reorganization and restructuring drive; and undertaking inspections. Emphasizing that workers' and employers' organizations should not be subject to retaliatory measures for having lodged a complaint with the Committee on Freedom of Association, the Committee requests the Government to provide further information in response to the allegations that the Ministry of Labour has denied workers the right to join the union and has refused to process documents in relation to organizing submitted by the complainant. The Committee also invites the complainant to provide additional detailed information with respect to this allegation.*

436. *With regard to the alleged wrongful dismissals of public sector workers' leaders during the period 2007–14, as the complainant has not furnished further details in this regard despite being requested to do so, the Committee will not pursue its examination of this allegation.*

437. *Lastly, the Committee encourages the Government to consider availing itself of the technical assistance of the Office with a view to addressing the Committee's recommendations and strengthening the capacity of the Government and the social partners.*

The Committee's recommendations

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

(a) The Committee invites the complainant to provide its observations on the information provided in the Government's communication relating to the disassociation of the RIAWU from the NBT and its understood effect on the CBA and to indicate whether it has had judicial recourse in this regard. The Committee again requests the Government to indicate the measures taken to ensure that the RIAWU can continue to fulfil its functions in representing the workers and defending their occupational interests without fear of intimidation or reprisal.

(b) Once again expressing its concern at the employer's alleged statements with regard to the remittance of union dues and at the impact that such statements might have on the exercise of trade union rights at the airport, the Committee requests the Government to reply in full to these allegations.

(c) The Committee requests the Government to keep it informed of the outcome of the investigation by the Labour Standards Division of the Ministry of Labour into Mr Weh's dismissal. It further requests the Government to indicate whether Mr Garniah's dismissal is covered by the same investigation and, if not, to conduct an immediate inquiry into the grounds for his dismissal and keep it informed of developments. If it is found that Mr Weh and Mr Garniah were dismissed for the exercise of legitimate trade union activities, the Committee requests the Government to take the necessary steps to ensure that they are fully reinstated, without loss of pay. In the event that reinstatement is not possible, for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that they are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals.

(d) Emphasizing that workers' and employers' organizations should not be subject to retaliatory measures for having lodged a complaint with the Committee on Freedom of Association, the Committee requests the Government to provide further information in response to the allegations that the Ministry of Labour has denied workers the right to join the union and has refused to process documents in relation to organizing submitted by the complainant. The Committee also invites the complainant to provide additional information with respect to this allegation.

(e) The Committee encourages the Government to consider availing itself of the technical assistance of the Office with a view to addressing the Committee's recommendations and strengthening the capacity of the Government and the social partners.

CASE NO. 3126

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

Complaint against the Government of Malaysia presented by the National Union of Bank Employees (NUBE)

Allegations: The complainant organization alleges the violation of the collective agreement in force by the employer, a bank, dismissal of union members and a series of other anti-union acts including the restriction of the right to industrial action by compulsory arbitration and an attempt to deregister the union following the declaration of a trade dispute by the complainant

439. The Committee last examined this case at its October 2016 meeting, when it presented an interim report to the Governing Body [see 380th Report, paras 697–724, approved by the Governing Body at its 328th Session (November 2016)].

440. The Government sent its observations in communications dated 21 February 2017 and 11 October 2017.

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

A. Previous examination of the case

442. At its November 2016 meeting, the Committee made the following recommendations [see 380th Report, para. 724]:

(a) The Committee urges the Government to keep it informed of the outcome of the judicial review by the High Court on the trade dispute case as well as of the ruling of the Court of Appeal concerning the case involving 27 dismissed employees, and of any follow-up to these court decisions.

(b) Recalling its principles on compulsory arbitration to end a collective labour dispute, the Committee expects the Government to ensure their full respect and to provide without delay its observations in relation to the case.

(c) With regard to the allegation that the company filed an Application for Mandamus for the Director-General of Trades Union to deregister NUBE which was heard on 1 April 2015, the Committee urges the Government to provide without delay information on the outcome of such application and any other information relevant to this serious allegation.

B. The Government's reply

443. In its communication dated 21 February 2017, the Government indicates that with respect to recommendation (a), the High Court has not fixed a date for the hearing of Case No. 22(5)/3-1449/13 (*NUBE* v. *Hong Leong Bank* (hereinafter "the bank")), but has set a

date of 1 September 2017 for case management for the parties to file affidavits, including their reply. With respect to Case No. 13/4-545/14 (*Nur Hasmila Hafni Binti Hashim and 26 others* v. *the bank*), the Government indicates that the Court of Appeal in Putrajaya set a date of 12 April 2017 for case management for the filing of submission and documents, and that the date of the hearing was set for the same date. In its communication dated 11 October 2017, the Government indicates that the Court of Appeal dismissed the application from the bank. The Government states that the Industrial Court awaits the sealed court order from the complainant's lawyer before proceeding, and that it will process the case without delay.

444. With respect to recommendation (b), the Government states that the policy of voluntary and compulsory arbitration generally has been practised and implemented in the industrial relations system in Malaysia in accordance with the Industrial Relations Act, 1967. The Government asserts that this policy has proved to be effective in maintaining industrial harmony and was well accepted by employers, employees and trade unions prior to the complaint made by the NUBE in 2015.

445. Referring to the Committee's previous recommendation concerning compulsory arbitration to end a collective labour dispute, the Government indicates that the principles stated in paragraph 564 of the *Digest of decisions and principles of the Freedom of Association Committee, fifth (revised) edition, 2006*, do not apply to the situation examined in the complaint. The Government asserts that the complaint concerns picketing activity, and that the paragraph does not cover compulsory arbitration in relation to picketing activity. Further, the Government indicates that the reference of the trade dispute to the Industrial Court by the Minister of Human Resources was done in good faith to pursue an immediate solution through arbitration, and not for the reasons previously asserted by the complainant.

446. The Government indicates that a trade dispute is defined broadly in the Industrial Relations Act, as "any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment of the conditions of work of any such workmen" and covers both collective and individual disputes, and collective disputes relating to collective interest disputes and collective rights disputes. The Government states that while in some countries there are different laws for different categories of labour disputes, the Industrial Relations Act treats all trade disputes the same. Collective interest disputes refer to disagreements where negotiating parties disagree over the determination of terms and conditions of employment to be set out by a new collective agreement or the modification of an existing collective agreement, including disputes arising in the context of collective bargaining. Collective rights disputes arise in relation to the terms and conditions of work set out under law or in a collective agreement where that agreement carries the force of law. The Government indicates that such disputes commonly relate to situations which appear during the application of a collective agreement or when the interpretation of an existing collective agreement is challenged by one of the parties. The Government states that the complaint by the NUBE falls within the collective rights category of trade dispute as the dispute relates to articles 4(3), 6 and 15 of the collective agreement that required immediate arbitration by the Industrial Court.

447. The Government refers to the recommendations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) stating that the imposition of compulsory arbitration by the authorities in interest disputes is contrary to the principle of the voluntary negotiation of collective agreements as established in Convention No. 98. The Government states that it is undeniable that there is a non-compliance issue on the principle of compulsory arbitration in trade disputes involving collective interest disputes in the Industrial Relations Act, but that this is not the case for all types of disputes. The Government states that it is, however, open to recommendations and suggestions that it may consider for future amendments.

448. With respect to recommendation (c), the Government recalls that the bank had made an application to the Director-General of Trade Unions (DGTU) to deregister the NUBE, but that the DGTU decided not to deregister the union, and that the bank subsequently made a mandamus application to the High Court. The Government indicates that the High Court dismissed the bank's mandamus application, and that no appeal has been made by the bank. The Government further indicates that the bank was ordered to pay 10,000 Malaysian ringgit (MYR) to both the DGTU and the NUBE.

C. The Committee's conclusions

449. *The Committee notes the Government's indication that, with respect to the judicial review by the High Court of the Industrial Court of Kuala Lumpur's decision on the trade dispute (Case No. 22(5)/3-1449/13), the High Court has not fixed a date for the hearing, but has set a date of 1 September 2017 for case management for the parties to file affidavits, including their reply. With respect to the appeal of the bank of the first instance judgement in favour of the 27 dismissed employees (Case No. 13/4-545/14), it notes the Government's indication that the Court of Appeal in Putrajaya set a date of 12 April 2017 for case management for the filing of submission and documents, and that the date of the hearing was set for the same date. The Government indicates in its latest communication that the Court of Appeal dismissed the application from the bank. The Government adds that the Industrial Court awaits the sealed court order from the complainant's lawyer before proceeding, and that it will process the case without delay. The Committee once again urges the Government to keep it informed of the outcome of the judicial review by the High Court on the trade dispute case and any follow-up to this decision. It also requests the Government to provide information on the processing and implementation of the ruling of the Court of Appeal in favour of the 27 dismissed employees.*

450. *As regards the issue of the collective action more generally, the Committee notes the Government's indication that a trade dispute is defined broadly in the Industrial Relations Act, 1967, and covers both collective disputes relating to collective interest disputes and collective rights disputes. The Committee further notes the Government's statement that the Industrial Relations Act treats all trade disputes the same, whether rights disputes or interest disputes, including disputes that arise in relation to the terms and conditions of work set out under law or in a collective agreement where the collective agreement carries the force of law.*

451. *The Committee notes the Government's statement that the complaint by the NUBE falls within the category of collective rights disputes as the dispute relates to articles of the collective agreement (articles 4(3), 6 and 15) that it considered required immediate arbitration by the Industrial Court, while the Government adds that the compulsory arbitration occurred within the context of picketing action.*

452. *The Committee considers that it is not in a position to determine whether the issue in question in this specific case related to the application of the collective agreement or related to an interest dispute. The Committee does note however that the Government acknowledges that there is a non-compliance issue with compulsory arbitration in trade disputes involving collective interest disputes in the Industrial Relations Act in relation to the principle of voluntary negotiation of collective agreements under Convention No. 98. In this respect, the Committee, referring to its previous conclusions in this case [380th Report, para. 722], requests the Government to take measures in full consultation with the social partners to bring its legislation and practice into conformity with the principle that the referral of interest disputes to compulsory arbitration should be limited to cases where both parties involved in a dispute request it, or in the case of disputes 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. The Committee draws the legislative aspects of this case to the attention of the CEACR.

453. *The Committee takes due note of the Government's indication that the High Court dismissed the bank's mandamus application to have the NUBE deregistered, and that no appeal has been made by the bank. It further notes that the bank was ordered to pay MYR10,000 to both the DGTU and the NUBE.*

The Committee's recommendations

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

(a) The Committee once again urges the Government to keep it informed of the outcome of the judicial review by the High Court on the trade dispute case and any follow-up to this decision. It also requests the Government to provide information on the processing and implementation of the ruling of the Court of Appeal in favour of the 27 dismissed employees.

(b) The Committee requests the Government to take measures in full consultation with the social partners to bring its legislation and practice into conformity with the principle that the referral of interest disputes to compulsory arbitration should be limited to cases where both parties involved in a dispute request it, or in the case of disputes 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. The Committee draws the legislative aspects of this case to the attention of the CEACR.

CASE NO. 3076

INTERIM REPORT

Complaint against the Government of the Republic of Maldives presented by the Tourism Employees Association of Maldives (TEAM)

Allegations: Disproportionate police force used against striking workers; arbitrary arrest of TEAM members and leaders; unfair dismissal of nine workers including TEAM leaders who participated in and led a strike. The complainant reports that despite a definitive court judgment in their favour, the dismissed workers have not been reinstated in their positions more than four years after their dismissal

455. The Committee last examined this case at its March 2017 meeting, when it presented an interim report to the Governing Body [see 381st Report, paras 496–504, approved by the Governing Body at its 329th Session].

456. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on several occasions since the presentation of the complaint. At its meeting in June 2017 [see 382nd Report, para. 8], the Committee issued an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case even if the information or observations requested had not been received in due time. To date, the Government has not sent any information.

457. The Republic of Maldives 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

458. At its March 2017 meeting, the Committee made the following recommendations [see 381st Report, para. 504]:

(a) The Committee regrets that, despite the time that has elapsed since the last examination of the complaint in October 2015, the Government has once again not replied to the complainant's allegations even though it has been requested several times to do so, including through an urgent appeal. The Committee urges the Government to provide its observations on the complainant's allegations without further delay and to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.

(b) The Committee urges the Government to conduct an independent investigation as to the grounds for the arrest and detention of TEAM members on the three mentioned occasions (December 2008, April 2009 and May 2013) and, should it appear that they have been arrested because of their trade union activities, to hold those responsible into account and take the necessary measures to ensure that the competent authorities receive adequate instructions not to resort to arrest and detention of trade unionists for reasons connected to their union activities in the future. The Committee requests the Government to keep it informed of the measures taken in this regard.

(c) The Committee urges the Government to take all the necessary steps for the immediate enforcement of the sentence ordering the reinstatement of TEAM leaders and the payment of the remaining back wages, and to keep it informed of the steps taken in this regard.

(d) The Committee urges the Government to conduct an independent inquiry into the allegations of excessive force used by the police in this case, and ensure that adequate instructions are given so that such situations do not occur in the future. The Committee requests the Government to keep it informed of developments.

(e) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue.

B. The Committee's conclusions

459. *The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint in April 2014, the Government has still not replied to the complainant's allegations even though it has been requested several times to do so, including through several urgent appeals [see 375th Report, para. 8; 380th Report, para. 8 and 382nd Report, para. 8]. The Committee urges the Government to provide its observations on the complainant's allegations without further delay and to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.*

460. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*

461. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report of the Committee, para. 31].*

462. *Under these circumstances, recalling that this case refers to events that took place between November 2008 and May 2013 and concerns allegations of disproportionate use of police force against striking workers, repeated arrest and detention of TEAM leaders, their dismissal, and non-enforcement of the court ruling ordering their reinstatement without loss of pay, the Committee finds itself obliged to reiterate the conclusions and recommendations it made when it examined this case at its meeting in March 2017 [see 381st Report, paras 496–504].*

The Committee's recommendations

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

(a) The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint in April 2014, the Government has still not replied to the complainant's allegations even though it has been requested several times to do so, including through several urgent appeals. The Committee urges the Government to provide its observations on the complainant's allegations without further delay and to be more cooperative

in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.

(b) The Committee once again urges the Government to conduct an independent investigation as to the grounds for the arrest and detention of TEAM members on the three mentioned occasions (December 2008, April 2009 and May 2013) and, should it appear that they have been arrested because of their trade union activities, to hold those responsible into account and take the necessary measures to ensure that the competent authorities receive adequate instructions not to resort to arrest and detention of trade unionists for reasons connected to their union activities in the future. The Committee requests the Government to keep it informed of the measures taken in this regard.

(c) The Committee urges the Government to take all the necessary steps for the immediate enforcement of the sentence ordering the reinstatement of TEAM leaders and the payment of the remaining back wages, and to keep it informed of the steps taken in this regard.

(d) The Committee urges the Government to conduct an independent inquiry into the allegations of excessive force used by the police in this case, and ensure that adequate instructions are given so that such situations do not occur in the future. The Committee requests the Government to keep it informed of developments.

(e) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue.

CASE NO. 3163

DEFINITIVE REPORT

Complaint against the Government of Mexico presented by the United Trade Union of Workers of the Water Supply and Sewerage Network (SUTSAPA)

Allegations: The complainant organization alleges the refusal of a local conciliation and arbitration board to register a change in its executive board

464. The complaint is contained in two communications from the United Trade Union of Workers of the Water Supply and Sewerage Network (SUTSAPA) dated 16 April and 22 October 2015.

465. The Government sent its reply in two communications dated 26 May and 25 October 2016.

466. Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

467. In a communication dated 26 May 2015, the complainant organization states that, on 1 October 2013, Mr Raúl Contreras Ramírez, Mr Luis Aguilar Domínguez and Mr Miguel Avitia Sánchez, in their capacity as the workers' representatives, convened an extraordinary general assembly of SUTSAPA on 5 October 2013, which was attended by more than 51 per cent of the trade union's members. The complainant alleges that, in exercising its legitimate right to freedom of association, it decided during the extraordinary general assembly to remove the union's entire leadership because a number of its officers had allegedly sexually harassed union members and contravened its statutes.

468. The complainant states that, during the extraordinary general assembly, Mr Adin Corzo Hernández was elected General Secretary of SUTSAPA and that, on 10 October 2013, the new executive board filed an application with the Chairperson of the Local Conciliation and Arbitration Board (JLCA) in the State of Chiapas to "take note of" (register) the change in officers, in accordance with article 377 of the Federal Labour Act. On 18 October 2013, the members of the new executive board met with the managing director of the enterprise to inform him of the change in executive board and request him to cease all communications with the former executive board.

469. The complainant reports that, on 5 December 2013, the new General Secretary of SUTSAPA requested the JLCA to register the change in executive board with immediate effect. It further states that, given the failure of the JLCA to do so, the executive board asked the Governor of the State of Chiapas to intervene. The Governor, in a letter dated 16 January 2014, informed the new members of the union's executive board that their request had been forwarded to the Ministry of Labour of the State of Chiapas and that it would be dealt with as soon as possible.

470. The complainant adds that, on 9 December 2013, the Chairperson of the JLCA refused to register the change in executive board because, under article 365, section IV, of the Federal Labour Act, the union must provide a certified copy of the minutes of the assembly at which the executive board was elected – certified by the general secretary, organization secretary and minutes secretary – and that the committee making the application failed to provide this. It was also refused on the grounds that the agenda included in the convocation to the extraordinary general assembly made no mention of the change in executive board, which is required under article 19 of the union's statutes, and that the procedure set forth in article 34 of the statutes was not followed.

471. With regard to the refusal to register the change in executive board, the complainant states that: (i) in refusing to register the change in executive board on the grounds of non-compliance with the union's statutes, the JLCA exceeded its authority, since, according to the Committee on Freedom of Association's guidelines, the registration of trade union representatives should take place automatically when reported by the trade union, and should be contested only at the request of the members of the trade union in question, hence it was not up to the JLCA to verify the own-initiative procedure; (ii) the trade union followed the procedure set forth in the statutes, given that, according to article 11, the removal and resignation from trade union office should be dealt with in extraordinary general assemblies; (iii) in a change of officers on 28 January 2012, despite the fact that this change was made in an ordinary general assembly and that on that occasion there was a failure to comply with the statutes, the JLCA did not oppose the appointments; (iv) according to articles 9 and 17 of the statutes, the general assembly is the trade union's highest decision-making body and enjoys trade union autonomy, hence any decision adopted during ordinary and extraordinary general assemblies is irrevocable and the general assembly may disregard the provisions of the statutes; (v) the JLCA was wrong to refuse the application for registration on the grounds that uncertified copies were attached to the application, instead of certified copies, and to claim that these were of no value as evidence, since, according to the criteria established by

the Committee on Freedom of Association, the Chairperson of the JLCA only has the authority to register, and not to verify evidence; and (vi) the application for registration was filed with the JLCA on 10 October 2013 and this authority refused the application on 9 December 2013, meaning that the JLCA took more than 60 days to issue its decision and the principle of *positiva ficta* (automatic approval) therefore applied.

472. The complainant also states that the officers elected lodged an indirect appeal under the *amparo* procedure with the Sixth District Court in the State of Chiapas against the decision issued by the Chairperson of the JLCA on 9 December 2013. The appeal was rejected on 23 September 2014, as registration of the application for the change in executive board was contingent on electoral procedures being verified. Thus, the relevant authority had to verify whether the procedure followed in the election of the new executive board had complied with the formal requirements of the union's own statutes.

473. The complainant considers that the 2011 constitutional reform with respect to human rights and the Supreme Court of Justice's decision in the Rosendo Radilla Pacheco case established the requirement to recognize the human rights defined by international sources of law as part of the Mexican constitutional system. Thus, in making the registration contingent on complying with the formal requirements of the statutes, the judge had made it a requirement to take into account the Committee on Freedom of Association's criteria, which would not otherwise have been applicable.

474. The complainant adds that an application for a judicial review of the *amparo* decision handed down by the Sixth Court was filed with the Third Collegiate Court, Twentieth Circuit. On 12 March 2015, the appeal was rejected on the grounds that it was not possible to grant automatic recognition or registration to anyone requesting it and producing any form of minutes, since checks must first be carried out to ensure that any actions taken followed the procedures set forth in the union's statutes and the Federal Labour Act. The court also noted that, in order for the authority to register automatically the changes requested after verification that requirements had been met, trade unions must attach certified copies in duplicate of the minutes noting the changes in trade union executive boards. This would enable the authority to check the procedure followed and outcome recorded in the minutes against the rules freely adopted in the statutes, in order to ascertain whether there had been compliance with those statutes. Moreover, the vote and its outcome must adhere to the terms of the statutes freely formulated by the members. In this respect, the complainant once again states that the registration of trade union executive boards should take place automatically and that the JLCA, having refused to register the changes, and the two courts, having upheld the refusal, obstructed and limited the right to trade union activity in contravention of Article 3 of Convention No. 87.

475. Lastly, the complainant alleges the deterioration in the conditions of work of a number of union officials elected during the extraordinary general assembly of 5 October 2013, in violation of their trade union immunity. In this connection, the complainant states that: (i) Mr Jorge Alejandro Reyes López, sports secretary, after working the night shift for five years, was transferred to the morning shift, resulting in him receiving a wage reduction; (ii) Ms Esperanza Melgar Cruz, finance, statistics and budget secretary, was transferred to another branch; and (iii) Mr Apolinar Jonapa Morales, press and media secretary, was transferred both to another branch and to another shift.

476. The complainant requests the Committee to ensure recognition of the right of workers to freely elect their own representatives, which requires changes in executive boards to be registered immediately. It also calls for a thorough investigation to be ordered into the deterioration in the conditions of work of the union officials mentioned above.

B. The Government's reply

477. In the communication received on 2 November 2016, the Government conveys the information provided by the JLCA. In this regard, it states that, on 11 September 2015, Mr Jorge Iván Domínguez Molina, in his capacity as SUTSAPA general secretary, submitted a letter to the JLCA requesting the registration of a new executive board elected by majority vote in the extraordinary general assembly held on 29 August 2015.

478. With respect to the registration, it further states that, on 18 September 2015, the JLCA announced its agreement to the application for registration of the change in executive board dated 29 August 2015, once the applicants had met the requirements set out in articles 359 and 377, section II of the Federal Labour Act, as well as the procedures established in articles 9 and 19 of the union's statutes and Article 3 of Convention No. 87. It also provides a list of the new executive board, which will hold office from 29 August 2015 to 28 August 2018.

479. With regard to the complaint before the Committee, the Government considers that there has been no violation of SUTSAPA's right to freedom of association. The Government therefore requests the Committee to take note of the information and to close the case, considering that it does not call for further detailed examination.

C. The Committee's conclusions

480. *The Committee notes that in this case the complainant alleges, on the one hand, the refusal by the JLCA to register the change in the SUTSAPA executive board, in a decision dated 9 December 2013, and, on the other hand, the deterioration in the conditions of work of three members of the executive board who were elected on that occasion. These actions contravene the principles of freedom of association.*

481. *With respect first to the JLCA's refusal to register the change in executive board, owing to the failure to provide a certified copy of the minutes of the assembly as required under the Federal Labour Act and to follow the procedures set forth in SUTSAPA's statutes, the Committee notes that the complainant states specifically that: (i) the JLCA had exceeded its authority, given that the registration of officers must take place automatically, and hence it was not up to the board either to verify compliance with the union's statutes or to ascertain whether the copies of the minutes of the assembly provided were uncertified or certified; (ii) in accordance with SUTSAPA's statutes, the removal from trade union office should be dealt with in an extraordinary general assembly, and (iii) according to the statutes, the general assembly enjoys full trade union autonomy and can therefore disregard the formal aspects of the statutes.*

482. *The Committee, while noting the information provided with respect to the JLCA's registration of the new SUTSAPA executive board elected during the extraordinary general assembly in 2015, regrets that the Government has failed to provide its observations on the JLCA's decision of 9 December 2013 refusing to register the change in executive board.*

483. *The Committee further notes that, according to the information provided by the complainant, the JLCA's decision refusing to register the change in officers was challenged before the Sixth District Court in Chiapas, which rejected the application for* amparo*, and that an application for a judicial review was filed with the Third Collegiate Court, Twentieth Circuit, which upheld the decision to refuse registration of the change in executive board.*

484. *In consideration of the above factors, the Committee notes that the executive board elected on 5 October 2013 was not registered by the JLCA, owing to the failure, on the one hand, to provide a certified copy of the minutes, as required under article 365, section IV of the*

Federal Labour Act, and, on the other hand, to comply with articles 19 and 31 of SUTSAPA's statutes, in particular the failure to include the election of the new executive board on the agenda of the extraordinary general assembly.

485. *With regard to the JLCA's insistence on compliance with the legal requirement to provide certified copies of the minutes of the extraordinary general assembly at which the change in officers was made and in accordance with the procedures established in the trade union bylaws, the Committee emphasizes that free election of trade union officials is not at variance with the fulfilment of certain formal requirements for the registration of trade union organizations and their officers, provided that such requirements are reasonable, and that, if the body responsible for registering the change in executive board considers that there are irregularities in the documentation submitted, an opportunity should be provided for the organization to rectify the irregularities in question [regarding this last point, see previous cases: 334th Report, Case No. 2282, para. 638; 337th Report, Case No. 2346, para. 1056; and 340th Report, Case No. 2393, para. 1059]. The Committee notes that a new executive board was registered in 2015, therefore it will not pursue the examination of this allegation.*

486. *As for the issue raised by the JLCA and the courts concerning the complainant organization's non-compliance with the statutes, the Committee considers it important to recall that no violation of the principles of freedom of association is involved where the legislation contains certain rules intended to promote democratic principles within trade union organizations or to ensure that the electoral procedure is conducted in a normal manner and with due respect for the rights of members in order to avoid any dispute as to the election results [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 399]. The Committee notes that, in this case, the failure to include the vote on the executive board on the agenda of the extraordinary general assembly, in addition to negatively affecting the governance of the trade union, could have had an effect on the level of participation of members in that assembly, and consequently on their final decision. Given these circumstances and, as the aim of monitoring compliance with the union's statutes appeared to be to ensure the democratic functioning of the union, the Committee considers that no violations of the principles of freedom of association are involved, and therefore will not pursue the examination of this allegation.*

487. *With regard to the allegations related to a deterioration in working conditions, in particular transfers and the unilateral change in the work schedules of three union representatives elected on 5 October 2013the Committee trusts that the Government will ensure that these workers will not be disadvantaged for trade unions activities.*

The Committee's recommendation

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

CASE NO. 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: The complainant alleges killings, 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

489. The Committee last examined this case at its June 2016 meeting, when it submitted an interim report to the Governing Body [see 378th Report, paras 629–647, approved by the Governing Body at its 327th Session (June 2016)].

490. The Government sent its observations in a communication dated 25 May and 17 July 2017.

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

A. Previous examination of the case

492. At its previous meeting, the Committee made the following recommendations [see 378th Report, paras 629–647]:

(a) The Committee expresses its concern at the lack of judgments against those responsible for the murders of the four union leaders and firmly hopes that in the near future the criminal proceedings under way will lead to the identification of all the instigators and perpetrators of the murders, that responsibility will be apportioned and that those guilty will be duly punished. The Committee requests the Government to keep it informed of developments in the criminal proceedings relating to the four union leaders (and to clarify whether the suspected murderer of Carlos Armando Viera Rosales is detained or has been released) and to the three union members.

(b) While welcoming the Government's initiative to convene a tripartite dialogue forum in June 2014, it notes that the forum was postponed owing to a lack of trust between the parties, and requests the Government to inform it of the actions taken to build trust between the parties and foster tripartite dialogue.

(c) The Committee requests the Government to inform it, without delay, of the results of the quantitative and qualitative investigation into the cases of extortion and homicide in the civil construction sector which, according to the Government, the Crime Observatory of the Public Prosecutor's Office should have carried out in 2014.

(d) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

B. The Government's reply

493. In its communication of 25 May and 17 July 2017, the Government submitted an updated report from the Public Prosecutor's Office on the status of the investigations and criminal proceedings in respect of the murders of union leaders Mr Ruben Snell Soberón Estela, Mr Miguel Díaz Medina, Mr Carlos Armando Viera Rosales and Mr Guillermo Alonso Yacila Ubillus and of union members Mr Luis Esteban Luyo Vicente, Mr Jorge Antonio Vargas Guillen and Mr Rodolfo Alfredo Mestanza Poma.

494. With regard to union leaders Ruben Snell Soberón Estela and Miguel Díaz Medina, the Government indicates that the Provincial Prosecutor's Office Specializing in Organized Crime of Lambayeque is currently conducting an investigation under File No. 020-2016, as part of which Mr Wilmer Zegarra Bonilla has been investigated for allegedly instigating these murders.

495. With regard to union leader Carlos Armando Viera Rosales, the Government indicates that on 16 September 2015 the First Transitional Criminal Court of Callao announced that criminal proceedings were dismissed owing to the death of the defendant, Miguel Armando Agurto Moreira. For its part, with regard to union leader Guillermo Alonso Yacila Ubillus, it indicates that, since the suspected perpetrator of the murder had not been identified, on 12 May 2014 the Sixth Provincial Criminal Prosecutor's Office permanently archived the case by Decision No. 128-2014.

496. With regard to union member Jorge Antonio Vargas Guillen, the Government reports that: (i) by Decision No. 21 of 15 July 2014, the Second Criminal Appeals Chamber of the High Court of Justice of La Libertad upheld the custodial sentence of 20 years handed down to Idelso Amambal Cova for premeditated murder; (ii) by a rehabilitation decision of 2 September 2015, the Court of Preliminary Investigation in San Pedro de Lloc decided to consider the sentence handed down to Ana Cecilia Guevara as having been served; and (iii) by Decision No. 4 of the Collegiate Criminal Court of Trujillo, Alberto Rojas Paucar was acquitted of the charge of being an accessory to premeditated murder. With regard to the murder of Luis Esteban Luyo Vicente, the Government reports that trial proceedings are currently opening before the Collegiate Criminal Court of Cañete (Case No. 00058-2012-30-0801-JR-PE-02). Lastly, with regard to Rodolfo Alfredo Mestanza Poma, it states that the criminal proceedings against Paolo Bustamante Clemente and others are at an intermediate stage before the Third Investigation Bureau of the Provincial Prosecutor's Office of Huaura, with a request made for dismissal of the proceedings and a hearing relating to the dismissal scheduled for 30 May 2017.

497. Concerning the Committee's recommendation (c), the Government includes a note from the Public Prosecutor's Office stating that the investigation into cases of extortion and homicide in the construction sector which should have been conducted by its Crime Observatory in 2014 has been rescheduled for institutional reasons.

C. The Committee's conclusions

498. *The Committee recalls that the present case concerns the murders of union leaders and members against the backdrop of a climate of violence, threats and extortion created by criminal mafia groups in the construction sector. The complainant organizations also allege that the authorities are uninterested and ineffective and that the groups which commit the crimes do so with impunity.*

499. *The Committee notes the detailed information from the Public Prosecutor's Office, transmitted by the Government, concerning the status of the investigations and criminal proceedings in relation to the various murders reported in the context of this case. With*

regard to the murder of union leaders Ruben Snell Soberón Estela and Miguel Díaz Medina, the Committee notes the Government's indication that the Provincial Prosecutor's Office Specializing in Organized Crime of Lambayeque is currently conducting an investigation under File No. 020-2016, as part of which Wilmer Zegarra Bonilla has been investigated for allegedly instigating these murders. The Committee requests the Government to keep it informed in this regard.

500. *In respect of the murder of union leader Carlos Armando Viera Rosales, the Committee notes the Government's statement that on 16 September 2015 the criminal case was dismissed owing to the death of the defendant, Miguel Armando Agurto Moreira. Furthermore, regarding the murder of union leader Guillermo Alonso Yacila Ubillus, the Committee notes that, since the suspected perpetrator had not been identified, on 12 May 2014, the Sixth Provincial Criminal Prosecutor's Office permanently archived the case. With regard to this last point, the Committee expresses its deep concern that the Public Prosecutor's Office has permanently archived the case, and recalls once again that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, which is extremely damaging to the exercise of trade union rights [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 52]. In the light of the foregoing, the Committee requests the Government to ensure that further investigations are conducted that will allow the perpetrators and instigators of the murder of union leader Guillermo Alonso Yacila Ubillus to be identified and to ensure that the guilty parties are duly penalized. The Committee requests the Government to keep it informed in this respect.*

501. *With regard to the murder of the three trade union members, the Committee notes that: (i) by Decision No. 21 of 15 July 2014, the Second Criminal Appeals Chamber of the High Court of Justice of La Libertad upheld the custodial sentence of 20 years handed down to Idelso Amambal Cova for the premeditated murder of Jorge Antonio Vargas Guillen; (ii) with regard to the criminal proceedings for the murder of Rodolfo Alfredo Mestanza Poma, a hearing relating to the dismissal was scheduled for 30 May 2017; and (iii) criminal proceedings in respect of the murder of Luis Esteban Luyo Vicente are at the stage of opening for trial. The Committee takes due note of this information and requests the Government to provide information as soon as possible on the latter two criminal proceedings.*

502. *The Committee also notes the Government's indication that the investigation into cases of extortion and homicide in the construction sector which should have been conducted by the Criminal Observatory of the Public Prosecutor's Office in 2014 has been rescheduled for institutional reasons. The Committee notes with concern that this investigation still has not been conducted and urges the Government to take all possible steps to ensure that the Public Prosecutor's Office conducts a thorough investigation as soon as possible into the reasons and the persons responsible for the violence in the construction sector, and that all the necessary penal action is taken based on the findings of the investigations.*

503. *Lastly, the Committee previously requested the Government to continue to take measures in the framework of tripartite dialogue to address the issue of violence in the civil construction sector, such as the organization of the tripartite dialogue forum by the Government in June 2014, which was postponed owing to a lack of trust between the parties. Emphasizing that the problem of violence in the civil construction sector and actions to eradicate it must be considered in the context of social dialogue, the Committee once again requests the Government to report on the actions taken to build trust between the parties and foster tripartite dialogue.*

The Committee's recommendations

504. ***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 findings of the investigation being conducted into the murder of union leaders Mr Rubén Snell Soberón Estela and Mr Miguel Díaz Medina.

(b) The Committee requests the Government to ensure that further investigations are conducted that would allow the perpetrators and instigators of the murder of trade union leader Mr Guillermo Alonso Yacila Ubillus to be identified, and that the guilty parties are duly penalized; the Committee also requests the Government to keep it informed in this regard.

(c) The Committee requests the Government to provide information as soon as possible on the criminal proceedings relating to the murder of union members Mr Rodolfo Alfredo Mestanza Poma and Mr Luis Esteban Luyo Vicente.

(d) The Committee urges the Government to take all possible steps to ensure that the Public Prosecutor's Office conducts, as soon as possible, a thorough investigation into the reasons and the persons responsible for the violence in the construction sector, and that all the necessary penal action is taken based on the findings of the investigations.

(e) Emphasizing that the problem of violence in the civil construction sector and action to eradicate it must be considered in the context of social dialogue, the Committee once again requests the Government to keep it informed of the actions taken to build trust between the parties and foster tripartite dialogue.

(f) The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

CASE NO. 3173

DEFINITIVE REPORT

Complaint against the Government of Peru presented by the National Union of Social Health Service Nurses (SINESSS)

Allegations: The complainant organization alleges that the suspension, by a public entity, of the deduction of trade union dues violates the autonomy of the union

505. The complaint is contained in a communication from the National Union of Social Health Service Nurses (SINESSS) dated 16 September 2015.

506. The Government sent its observations in communications dated 25 July 2016 and 11 April 2017.

507. 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

508. By a communication dated 16 September 2015, the complainant organization states that the Social Health Service of Peru (ESSALUD, hereinafter: the public entity) has violated the autonomy of the National Union of Social Health Service Nurses (SINESSS) by suspending, as from 15 June 2015, the deduction of the "special financial contribution for contingencies of termination, resignation or death" (CAEE), which was a compulsory payment to be made by all SINESSS members. The complainant states specifically in this respect that: (i) on 25 October 2012, the ordinary national plenary meeting of SINESSS delegates amended the union's constitution, incorporating, through section 7(g), the establishment of the special retirement/death fund, on the basis of the principles of solidarity and welfare; (ii) at the ordinary national plenary meeting of November 2013, the regulations governing the special financial contribution were adopted; (iii) under section 4 of the regulations, it was agreed to establish a financial benefit self-financed on a solidarity basis by all union members, to be known as the "special financial contribution for contingencies of termination, resignation or death" (CAEE), the contribution taking the form of a compulsory payment to be made by all SINESSS members; (iv) the aforementioned decision was not the subject of any challenge and the regulations were adopted by the SINESSS extraordinary national plenary meeting of 3 July 2015; (iv) the aforementioned plenary meeting decided that there was no need for SINESSS members to provide written consent for the deduction of the CAEE; (v) accordingly, the public entity deducted the CAEE from SINESSS members on four occasions; and (vi) the public entity, by official letter No. 57-SGC-GAP-GCGP-ESSALUD-2015 of 15 July 2015, unjustly and unlawfully ordered the deduction of the CAEE from SINESSS members to be suspended.

509. The complainant organization adds that, by tradition and custom, the public entity used to deduct the amounts determined by the SINESSS plenary from the union members without the need to obtain explicit permission from each member, which would have caused major operational difficulties for the union, since it had a national membership of 8,585 persons. On the basis of the above, the complainant asserts that the entity was guilty of interference in the functioning and administration of SINESSS, in violation of Convention No. 98 and the Labour Relations (Public Service) Convention, 1978 (No. 151), by disregarding the legitimacy of decisions taken by the ordinary and extraordinary plenary meetings of the union.

B. The Government's reply

510. In a communication of 25 July 2016, the Government forwarded the reply of the public entity, which states that: (i) pursuant to the decisions of the SINESSS ordinary and extraordinary national plenary meetings, the public entity deducted the CAEE in January, March, April and May 2015 for all workers who were members of SINESSS; (ii) on account of complaints from a number of SINESSS members and on the basis of subsection (c) of the third transitional provision of Act No. 28411 (National Budget Act), ESSALUD, by official letter No. 50-SGC-GAP-GCGP-ESSALUD-2015, requested the documents giving evidence of consent to the special deduction on the part of each of the unionized workers; (iii) further to a complaint filed with the National Labour Inspection Superintendency (SUNAFIL) by 216 women workers who were members of SINESSS, the labour inspector of the Lima Metropolitana branch of SUNAFIL, referring to the decisions of the Committee on Freedom of Association, instructed the public entity to refund all outstanding CAEE deductions to the female members of SINESSS who had not consented to such deductions; and (iv) on the basis of both domestic legislation and international labour law, the public entity, by official

letter No. 57-SGC-GAP-GCGP-ESSALUD-2015, decided to discontinue automatic CAEE deductions from all SINESSS members.

511. The Government also provided its observations regarding the allegations made by the complainant organization, indicating that: (i) the suspension of CAEE deductions by the public entity was primarily based on subsection (c) of the third transitional provision of the National Budget Act, which provides that "the payroll may only be modified through deductions established by law, by court order or by any other terms agreed to by the serving or former official and with the approval of the Director-General of the Administration or the person acting on his/her behalf"; (ii) the abovementioned suspension was also based on section 28 of Act No. 25593 (Collective Labour Relations Act), which provides that the employer, at the request of the trade union and with the written consent of the unionized worker, is obliged to deduct lawful ordinary and extraordinary union dues from pay where these are common to all union members; and (iii) the complainant's reference to the need to respect traditions and customs is not relevant inasmuch as customs, as a source of law, cannot contravene an already established legal provision.

512. By a second communication of 11 April 2017, the Government, adding to its previous observations, refers to the issuing of Supreme Decree No. 003-2017-TR, which came into force on 6 March 2017 and amends the regulations implementing the Collective Labour Relations Act. The Government states that: (i) before the entry into force of Supreme Decree No. 003-2017-TR, section 28 of the Collective Labour Relations Act had been considered as open to interpretation in such a manner that non-individual consent to make deductions was not excluded, and for this reason the public entity effected mass CAEE deductions in January, March, April and May 2015; (ii) with the entry into force of the abovementioned Supreme Decree, the terms of section 28 of the Collective Labour Relations Act are implemented, with section 16-A(a) incorporated into the regulations implementing the Collective Labour Relations Act, which explicitly stipulate that deductions of union dues from union members' pay require the express consent of each member. The Government concludes that the decision of the public entity to suspend the automatic deduction of the CAEE from all SINESSS members is in full conformity with the legislation in force and that the solution of requiring each unionized worker to give explicit consent prevents any disputes from arising, both within the union and between the union and the employer.

C. The Committee's conclusions

513. *The Committee observes that the present case refers to the discontinuation of the deduction of a special trade union contribution by a public entity in the health sector, which, according to the complainant organization, violates the union's autonomy. In this regard, the Committee notes the complainant's allegations that: (i) through various decisions of its ordinary and extraordinary plenary meetings in 2013 and 2015, SINESSS made provision in its regulations for the payment, by each of its members, of a "special financial contribution for contingencies of termination, resignation or death" (CAEE), for the purpose of financing a special fund in relation to retirement and/or death; (ii) for practical reasons, the SINESSS plenary decided that it was not necessary to have individual written consent to the deduction from its members; (iii) accordingly, the public entity deducted the CAEE payment from all SINESSS members in January, March, April and May 2015; and (iv) the public entity unlawfully ordered the suspension in July 2015 of the deduction of the aforementioned payment, thereby violating both the autonomy of SINESSS and the traditions and customs governing relations between the public entity and SINESSS.*

514. *The Committee also notes the Government's observations to the effect that: (i) the deduction of the CAEE at the beginning of 2015 by the public entity gave rise to a complaint made to the labour inspectorate by 216 women workers who were members of SINESSS; (ii) on the basis of the third transitional provision of Act No. 28411 (National Budget Act) and section*

28 of Act No. 25593 (Collective Labour Relations Act), the public entity, by a decision of 15 July 2015, approved the suspension of the automatic deduction of the CAEE on the grounds that the union had not provided evidence of individual consent to the deduction; and (iii) on 4 September 2015, the labour inspectorate instructed the public entity to make a full refund of the deducted CAEE contributions. The Committee further notes the Government's statement that the SINESSS decision is supported by the entry into force of Supreme Decree No. 003-2017-TR, which implements the provisions of section 28 of the Collective Labour Relations Act and expressly provides that deductions of union dues applied to union members require explicit consent from each member.

515. *With regard to the deduction of union dues, the Committee recalls that it has emphasized on many occasions 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, and also states that the requirement that workers confirm their trade union membership in writing in order to have their union dues deducted from their wages does not violate the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *fifth (revised) edition, 2006, paras 475 and 476].*

516. *The Committee also recalls that, in a previous case brought by the same complainant concerning failure by the same public entity to deduct a special contribution regarding which the SINESSS plenary had decided that there was no need for individual consent from its members, the Committee had asked the Government to ensure that the public entity would continue to deduct union dues from SINESSS members who had requested it [see 358th Report, Case No. 2724, para. 826]. As part of the follow-up to its recommendations, the Committee had been informed by the Government that the public entity was continuing to regularly deduct union dues from SINESSS members [see 367th Report, Case No. 2724, para. 91].*

517. *In the present case, the Committee observes that, as in Case No. 2724, the suspension by the public entity of the deduction of a special contribution recently established by the SINESSS plenary occurred further to the filing of complaints by union members and was based on the absence of explicit consent to the new deduction by SINESSS members. This being the case, and in the light of the principles set out above, the Committee considers that the decision of the public entity does not violate the principles of freedom of association and trusts that the public entity will continue to deduct ordinary and extraordinary union dues from SINESSS members who have requested it. The Committee therefore considers that this case does not warrant further examination.*

The Committee's recommendation

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

CASE NO. 3119

INTERIM REPORT

Complaint against the Government of Philippines presented by the Kilusang Mayo Uno (KMU)

Allegations: The complainant organization alleges harassment, intimidation and threats against trade union leaders and members by the armed forces in collusion with private companies

519. The Committee last examined this case at its May 2016 meeting, when it presented an interim report to the Governing Body [378th Report, paras 648–673 approved by the Governing Body at its 327th Session (June 2016)].

520. The Government forwarded its response to the allegations in communications dated 31 May, 29 June and 20 October 2016.

521. 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. Previous examination of the case

522. At its May 2016 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(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 by means of an urgent appeal, to present its comments and observations on this case. The Committee urges the Government to provide its observations on the complainant's allegations without further delay.

(b) With respect to the alleged acts of harassment and intimidation of several union officials in the Southern Mindanao region, especially Compostela Valley and Davao City, the Committee:

(i) requests the Government to take all necessary measures to guarantee the security of Vicente Barrios, Perlita Milallos and the other harassed trade union officials named above, and ensure respect in the future for the principles enunciated in its conclusions;

(ii) recalling that, in the framework of Case No. 2528, the allegations of harassment and intimidation had been referred to the NTIPC Monitoring Body for discussion and issuance of recommendations, requests the Government to take the necessary measures to ensure the full and swift investigation and resolution of the current allegations of acts of harassment and intimidation of trade union leaders and members of unions affiliated to the KMU;

(iii) requests the Government to take the necessary measures in the future to ensure respect for the principles enunciated in its conclusions and expects that the Government will take the necessary accompanying measures, including the re-issuance of appropriate high-level instructions, to ensure the strict observance of due process guarantees in the context of any surveillance and interrogation operations by the army and police in a way that guarantees that the legitimate rights of workers' organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members;

(iv) as to the alleged listing of trade unionists in the so-called "order of battle", requests the Government to indicate the measures taken to suppress "order of battle" lists which are likely to lead to the commission of acts of violence against trade unionists on the basis of their purported ideology.

(c) As regards the alleged presence of military in and around the workplace, the Committee expects that the Government will take the necessary accompanying measures, including the issuance of appropriate high-level instructions, to bring to an end prolonged military presence inside workplaces which is liable to have an intimidating effect on the workers wishing to engage in legitimate trade union activities and to create an atmosphere of mistrust which is hardly conducive to harmonious industrial relations.

(d) As to the allegation that the criminal charges brought against Artemio Robilla and Danilo Delegencia were false and linked to the exercise of legitimate trade union activities, the Committee is not in a position to determine, on the basis of the information brought before it, whether these cases concern trade union activities, and requests the Government to submit further and as precise information as possible concerning the legal or judicial proceedings instituted as a result of the charges and the result of such proceedings.

(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.

B. The Government's reply

523. In its communications dated 31 May, 29 June and 20 October 2016, the Government indicates that the Regional Tripartite Monitoring Body of Region XI (RTMB-XI) has been mobilized in gathering relevant information on the five cases of alleged harassment, intimidation, witch-hunting and grave threats committed by the military and police forces against trade union leaders and one case of filing of trumped-up charges against trade union leaders and members, in the Southern Mindanao Region (Region XI). In its report dated 20 March 2015, RTMB-XI reviewed the six cases cited in the complaint to identify whether they were related to freedom of association. Of the six cases, only the case of Rogelio Cañabano, Vice-President of Bigkis ng Nagkakaisang Manggagawa sa Apex Mines – Association of Democratic Labor Organizations – Kilusang Mayo Unio (KMU), was deemed by RTMB-XI as freedom of association related. The Government adds that RTMB-XI is continuously providing updates on the status of the cases, most recently on 1 and 14 March 2016. Moreover, as some of the cases allegedly involved the military, the AFP Human Rights Office (AFP–HRO) was requested to ensure that the provisions of the *Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP relative to the exercise of workers' rights and activities*, particularly Rule VIII on respect for workers' rights during Armed Forces of the Philippines (AFP) internal peace and security operations, are being observed by military units on the ground. The AFP–HRO was likewise requested to investigate the cases of harassment and, if warranted, apply necessary remedies as provided in Rule IX of the Guidelines. The cases were also brought to the attention of the AO35 IAC for investigation, evaluation, monitoring, and resolution.

524. As regards the case involving Vicente Barrios, the Government underlines that this case was already being monitored by the National Tripartite Industrial Peace Council (NTIPC) Monitoring Body and RTMB-XI. The attempted murder of Mr Barrios in 2006 had been initially reported to the ILO under ILO Case No. 2528. According to the RTMB-XI, a harassment incident occurred in December 2013 involving union members of Nagkahiusang Mamumuo sa Suyapa Farm (NAMASUFA) and the incumbent Barangay (township) Captain at that time and contractor of Packing Plant 92, Mr Jesus Jamero, who allegedly fired a warning shot at Mr Barrios while he and around 150 union members were gathered outside the plant in a protest activity (picket). Mr Barrios filed a complaint against Mr Jamero before the local police authorities and, after Mr Jamero pleaded with Mr Barrios not to pursue the case, the parties agreed to amicably settle the matter, and the case is considered closed. Mr Barrios stated for the record that neither the AFP nor the Philippine National Police

(PNP) was involved in the incident. According to the RTMB-XI report of 14 March 2016, Mr Barrios confirmed in an interview that the incident with Mr Jamero had been settled at the barangay level. As to the labour dispute, all workers were paid back wages under the compromise settlement of 26 December 2013 in the total amount of 1,125,440 Philippines peso (PHP). (US$22,266). According to Mr Barrios, another harassment incident occurred on 30 December 2014, involving NAMASUFA members and the chief of security and other guards of Packing Plant 92. The guards allegedly removed the streamers that the union members had posted and hanged outside the plant premises, which led to a heated altercation which almost ended in a brawl, but fortunately both parties could be pacified. Mr Barrios has filed a complaint with the relevant Department of Labor and Employment (DOLE) Field Office and has reported the incident to the relevant regional National Conciliation and Mediation Board (NCMB) branch. According to the updated information provided in February 2017, in March 2015, the case of Vicente Barrios was deemed to be a non-freedom of association-related case, since the statements and facts of the case do not clearly indicate who is perceived to be the perpetrator of the harassment and death threats allegedly experienced by the victim, and since there is no mention of any State party involvement in any of the harassment incidents. Moreover, according to an affidavit executed by Mr Barrios in September 2016, one year after the conciliation at barangay level, during a strike conducted by his union, Mr Barrios has again received death threats from Mr Jamero.

525. The Government further reports on the case of Perlita Millalos, President of Freshmax Workers Union – National Federation of Labor Unions (NAFLU) – KMU, who had led a strike against a banana plantation and was active on workers' concerns. On 26 November 2014, four men wearing civilian clothes who presented themselves as members of the 66th Infantry Battalion of the AFP interrogated her at her residence, asking her whether she was a union president or not and what organization she was a member of, stating that she had often been seen in rallies, enquiring about her activities as a union and community leader and alleging that one of her sons was a member of the New People's Army (NPA). Ms Millalos denied the allegations and declined their offer of a monthly stipend, cellphone, and load in exchange of her close cooperation with the Government's counter-insurgency programme and for reporting to him her trade union activities. The Government indicates that, according to the RTMB report of 14 March 2016, Ms Millalos forgot the name of the man, and has not been visited by military personnel since the time of the incident. According to the updated information provided in February 2017, the case of Perlita Millalos was deemed to be a non-freedom of association-related case, since the facts of the case would indicate that the alleged interrogation conducted by the military revolved around her and/or her son purportedly being an NPA member/supporter, and since the fact that she was the union president at the time of the interrogation appeared to be incidental for this case to be concluded as a freedom of association violation. The case was subsequently recommended to be dismissed as non-freedom of association-related.

526. The Government also provides information with respect to Rogelio Cañabano, who allegedly experienced a series of harassments from the military via several instances of interrogation pressing him about the activities of the union and demanding the names of the leaders, members, and organizers of the union. According to the investigation report of 19 March 2015 by the 71st Infantry Battalion (71 IB), the military did not harm or harass the constituents, since the conduct of survey/census in every household is part of the Peace and Development Outreach Program (PDOP). Ms Dominga Cañabano misinterpreted as harassment the conduct of census and picture-taking of her husband and their house by the military on 10 August 2014, whereas the troop's visit in every household in Barangay. Kinuban is part of the PDOP in order to identify issues and raise them during PDOP meetings, and taking pictures is part of their report and documentation. According to the RTMB-XI Report of 14 March 2016, the following information surfaced from the interview with Mr Cañabano: (i) the good relationship between management and the NPA went sour in September 2014, as management stopped giving monetary assistance to the NPA; (ii) after the NPA allegedly burned a property of the company, management sought the assistance of

the AFP, and army personnel went to Mr Cañabano's house to investigate the incident, tagging him as a member of the NPA; (iii) the army personnel allegedly asked for the list of the union members, saying that the workers have a link with the NPA; and (iv) management would want workers to side against the NPA but some workers sympathize with it because they help them in their labour concerns such as facilitating their regularization with the company. In a validation interview conducted by the Bureau of Labor Relations (BLR) on 26 September 2016, Mr Cañabano executed an affidavit and added that: (i) he personally did not experience any physical harassment from the military but felt intimidated by their frequent visits to his house and repeated questions sometimes wrongly accusing him of committing offenses; and (ii) within one month, the army personnel returned to his house and repeatedly asked about his involvement with "Endog" (tribal organization) and his participation in rallies. Moreover, Mr Cañabano corrected his previous sworn statement, clarifying that he had not been tagged by the army as a NPA member and that the army personnel's visit in his house was not related to the incident where the NPA allegedly burned a property of the company. According to the updated information provided in February 2017, in March 2015, the case of Rogelio Cañabano was deemed to be a freedom of association-related case since the facts clearly indicated that the interrogations conducted by the military revolved around his union activities.

527. In addition, RTMB-XI conducted field validation and gathered information with respect to the case of Artemio Robilla and Danilo Delegencia, President and Board Member of Maragusan DOLE Stanfilco Workers' Union – NAFLU – KMU, respectively, who were accused of murder and robbery committed against DOLE Stanfilco Supervisor Notalio Mamon in February 2014. An eye witness accompanied and assisted by a company guard, Ms Jennifer Puno-Doong, surfaced and averred the allegations, the alleged motive being the victim's refusal to provide work for the two accused, along with other co-workers which led to a confrontation followed by death threats. Military personnel led by a certain "Reyes" started to conduct surveillance in the residences of Mr Robilla and Mr Delegencia. During an interview with DOLE Compostela Valley, they admitted that there was a confrontation between them and Mr Mamon but denied committing the act, stressing that they were on duty at the time of the incident and that the distance between the crime scene and their workplace made it impossible for them to commit the act. In February 2016, they indicated to understand that the filing of the criminal charges had been a normal reaction by the family of the victim, while in November 2016 they reiterated their initial belief that the filing of criminal charges had been an act of harassment by management against active union officers. The charges were filed before the Provincial Prosecutors Office with the National Prosecution Service (NPS) Docket No. X1-01-INV-14B-00064 and subsequently, taking into account the counter-affidavits of the accused and irregularities with the address of the witness, referred back to the New Bataan Municipal Police Station for further investigation. Pursuant to Provincial Prosecutor Order of 20 April 2015, the initial finding of probable cause against Mr Robilla and Mr Delegencia was reversed with finality, given that, in view of its ruling of 7 January 2015 on the first motion for reconsideration where it had already reversed its earlier findings on probable cause, the Office of the Provincial Prosecutor decided not to entertain a second motion for reconsideration. According to the updated information provided in February 2017, in March 2015, it was deemed that the statements and facts did not clearly establish whether or not it is freedom of association related and further investigation was recommended. Considering that the alleged harassment was attributed to the company and not to the Government, RTMB-XI recommends that this case be disposed as non-freedom of association-related. The criminal case filed against Mr Robilla and Mr Delegencia was dismissed.

528. Moreover, the Government provides information on the case of the Radio Mindanao Network (RMN) Davao Employees Union (RDEU) – NAFLU–KMU, where union members employed at the radio station went on strike for 41 days due to unfair labour practice and refusal to bargain, and radio anchors belonging to management allegedly vilified the union officers and the federation in the radio programme "Koskos Batikos". Of the eight affected

employees, only Ms Gina Hitgano was available for interview at the time of the field visit, since Mr Bimbo Ponio and Mr Freeman Joe Gao-ay already resigned from the radio station while the other five affected employees were on-field as field reporters. Ms Hitgano manifested that, during the pickets and strike conducted by the union in September and October 2014, an unidentified person wearing civilian clothes took pictures and videos of them, and a motorcycle and four-wheel vehicle without number plates were roaming and monitoring the conduct of the pickets and strike, and that KMU leaders told them that those unidentified men and vehicles were from the military. Ms Hitgano also affirmed that during the said period, radio anchors from the management side attacked and busted the union and its federation on air, linking them to the communist movement and tagging them as NPA members, and discouraging listeners from joining unions. The Government states that RTMB-XI is in the process of gathering information from the radio anchors as well as from the relevant military unit. The labour dispute itself was resolved through a compromise settlement on 13 November 2014, and the case on illegal strike filed before the National Labour Relations Commission (NLRC) was resolved in favour of the union. According to the updated information provided in February 2017, in March 2015, the case of the RDEU was deemed to be a non-freedom of association-related case, since the facts of the case clearly indicated that the alleged violation was committed by management and there was no mention of any State agent involvement in the incident, and since the conduct of a 41-day strike without any State interference negated the claim of a freedom of association violation. Moreover, all union members were terminated, eight of which on 23 May 2016, pursuant to the Resolution of the NLRC dated 4 November 2015 and 8 March 2016, and the case was pending with the Court of Appeals; on 5 October 2016, following the conduct of a certification election, the RDEU lost and another union won and was issued the sole and exclusive bargaining certification.

529. Furthermore, the Government turns to the allegation that, following the torching incident by the NPA at the farm premises in Compostela Valley, management connived with the military from the 71 IB to call the union for a meeting, and the union officers of Musahamat Farm 2 Workers' Labor Union – NAFLU–KMU were interrogated with paraphernalia and tarpaulin of the Communist Party of the Philippines (CPP)–NPA–National Democratic Front (NDF) placed in front of them, and made to pose as rebels who surrendered to the AFP, with the proceedings being led by a lieutenant and taped. According to the investigation report of 19 March 2015 prepared by the 71 IB: (i) the lieutenant proceeded on 30 August 2014 to the farm, in coordination with management, to conduct an interview with KMU officers regarding the arson incident of 22 August 2014; (ii) during the interview, the rights of KMU officers were not violated in any way; (iii) the CPP/NPA/NDF propaganda were placed on the table to point out its deceitful misdeed; (iv) the lieutenant talked with the KMU officers calmly, discussing the grievances of the farm workers regarding the lapses of the management with regard to their services to the farm workers, with positive feedback from the KMU officers during the discussion; and (v) the harassment allegations were all fabricated and part of the propaganda effort of the CPP/NPA/NDF. Based on the recent report of the RTMB-XI, a Joint Affidavit executed on 15 May 2015 by two witnesses, Mr Wilfredo Paronda Jacosalem and Mr Marvin Tapaling Dumagpi, security guards at the farm, disclosed the following: (i) the security guards were on duty on 29 August 2014 from 8 to 11 a.m. during which period the lieutenant conducted a meeting with the members and officers of the union with the approval of management through its representative; (ii) prior to the activity being held at the second floor of the administrative building, the security officers were detailed on duty at the guard post situated within 15 metres from it; (iii) during the activity, they were never notified of any commotion, harassment or intimidation arising from the meeting between the military and the union officers and members; (iv) the military referred to the log-in and log-out requirements pursuant to the rules and regulations of management pertaining to security concerns, and the record book shows that no incident occurred during that period; and (v) the security guards did not notice any streamer, tarpaulin

and other printed materials in the possession of the military who only had with them their firearms, magazine pack and backpack upon entering the vicinity.

530. Nonetheless, according to a Joint Affidavit executed in 2016 by two union officials, Espiridion Cabaltera and Bernardita Almero: (i) some CPP–NPA paraphernalia were laid on the table and the union officers were made to sit down before it; (ii) the army personnel took pictures and videos of them while sitting in front of the CPP–NPA paraphernalia, and the union officers believed that the army personnel made it appear that they own the paraphernalia; (iii) the lieutenant was supervising the meeting which lasted for five hours; (iv) the army personnel were in their full battle gear, and the union officers felt harassed with their presence; (v) the discussion was about the arson incident, and the union officers believed that the army wanted to establish that they have a linkage with it, but they did not know anything about it; and (vi) in 2016, the 46 IB has been conducting community meetings tagging NAFLU–KMU as CPP–NPA, including in the framework of their "Operation Sabit" (posting of streamers regarding labour concerns), and discouraging the participants to join NAFLU–KMU saying that they will subsequently be recruited as members of the CPP–NPA. According to the updated information provided in February 2017, in March 2015, it was deemed unclear by RTMB-XI whether or not the case of the Musahamat Farm 2 Workers' Labor Union is freedom of association related, and further investigation was recommended since the facts of the case merely indicated that the alleged victims had been interrogated by the military and made to pose as rebel surrenders but there was no information on the reasons and content of the interrogation.

531. Lastly, according to the updated information provided by the Government in February 2017, the military indicated that: (i) it did not harm or harass the constituents; (ii) the complainants misinterpreted as harassment the conduct of survey/census in every household which is part of the PDOP; (iii) under this programme, the army personnel would conduct house-to-house visits and interviews, take pictures as part of the documentation and ask for their membership to an organization to ensure that assistance to be provided will not be redundant; (iv) the people-centred PDOP was never intended to infringe workers' rights to freedom of association but rather to regain the trust and confidence of the people because of its focus on identifying and addressing issues as the root causes for insurgency; and (v) the PDOP is the essential tool of the AFP that aims to win the peace instead of simply defeating the enemy and entails the conduct of non-traditional military activities focusing on the welfare of the community. The Committee also notes that, according to the investigation report of 19 March 2015 prepared by the 71 IB on the case of the Musahamat union, the harassment allegations were all fabricated and part of the propaganda effort of the CPP/NPA/NDF, and that its legal front, the KMU–Southern Mindanao Region (SMR), was filing complaints to the ILO to disrupt the PDOP effort and discredit the army personnel in the area and the AFP as a whole.

C. The Committee's conclusions

532. *The Committee notes that, in the present case, the complainant organization alleges harassment, intimidation and threats against trade union leaders and members by the armed forces in collusion with private companies.*

533. *The Committee notes with concern that, of the three cases of alleged harassment involving military personnel, only the case of Rogelio Cañabano was deemed by RTMB-XI as freedom of association related, notwithstanding the allegations that: (i) Perlita Milallos, union activist, had been repeatedly asked by military about her union function and her union activities and bribed to report on the latter; and (ii) Musahamat union members and leaders had been convoked by the employer to a meeting on the employer's premises and interrogated by heavily armed military for several hours. Generally, the Committee considers that the Government should ensure that, with respect to the working of the*

non-judicial monitoring bodies such as the IAC or the RTMBs, the criteria used for screening cases for its consideration should be broader than the judicial criteria used by the courts so as to not unduly exclude possible freedom of association cases and to ensure that labour activity or trade union function, even though other factors may be being considered, give rise to an in-depth review of the possible motivation. The Committee also requests the Government to take the necessary measures to ensure the full and swift investigation and resolution of the alleged acts of harassment of the above trade union leaders and members of KMU-affiliated unions, even if not committed by State actors, and to report on any investigation conducted and any remedies applied, including by the IAC and the AFP–HRO. The Committee also requests the Government to keep it informed on any forthcoming NTIPC-MB resolutions on the above cases.

534. *The Committee notes that the draft RTMB-XI Action Plan initially provided for the conduct of orientation/seminars on Conventions Nos 87 and 98 and trade union rights with the AFP and PNP officers and personnel, discussions on trade union rights in AFP curriculums; and personal talks of selected RTMB-XI members with the family of the victims; and that, eventually, in the relevant cases, RTMB-XI recommended the conduct of orientation/seminars on Conventions Nos 87 and 98 and trade union rights with the AFP personnel. The Committee notes with interest that, on 31 May 2016, the RTMB-XI has issued Resolution No. 1, series of 2016, calling on the AFP to ensure that the provisions of the Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP relative to the exercise of workers' rights and activities, particularly Rule VIII on respect for workers' rights during AFP internal peace and security operations, are being observed by military units on the ground. The Committee trusts that the integration of human rights in the curriculum of the AFP and PNP and the conduct of related training and capacity-building activities for the latter, will be sustained, also integrating specific modules on freedom of association and labour rights in recruitment and in the curriculum and training of the PNP and AFP, including anonymized case work and real situations, taking inspiration from the ILO training materials prepared in respect of military, police and security forces. The Committee expects once again that the Government will take the necessary accompanying measures, including the issuance of appropriate high-level instructions and training, to: (i) ensure the strict observance of due process guarantees in the context of any surveillance, interrogation or other operations (such as "Operation Sabit") by the army and police in a way that guarantees that the legitimate rights of workers' organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members; and (ii) to restrict as far as possible prolonged military presence inside workplaces which is liable to have an intimidating effect on the exercise of trade union rights [see also 356th Report, Case No. 2528, para. 1184]. The Committee encourages the Government to continue to take steps to raise awareness in the army and police about the need to disassociate the conduct of legitimate trade union activities from insurgency.*

535. *In the remaining three cases concerning Mr Robilla and Mr Delegencia, the RDEU and Mr Barrios, the Committee notes that RTMB-XI recommended that the cases be disposed as non-freedom of association related, since the alleged harassment was attributed to the company or a private person and not to the Government. The Committee recalls that the Government has the duty to defend a social climate where respect for the law reigns as the only way of guaranteeing respect for and protection of individuals, and that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 34 and 44]. The Committee trusts that the Government will also establish fast-track procedures for freedom of association violations committed by non-state actors and requests to be kept informed of developments.*

536. *Lastly, the Committee takes due note of the fact that the criminal charges concerning Mr Robilla and Mr Delegencia were dismissed. Concerning the case regarding Vicente Barrios, which was resolved at the barangay level, the Committee strongly requests the Government to take all necessary measures to guarantee his security, particularly in view of the new death threats reportedly directed against him and to report on the outcome of the proceedings instituted with respect to the most recent alleged act of harassment. As to the case concerning the RDEU, observing that, following the alleged vilification by management, the union lost the certification election, the Committee requests the Government to take the necessary measures to ensure the full and swift investigation and resolution of the alleged acts of harassment of trade union leaders and members of the RDEU. Furthermore, noting with concern that, while the case on illegal strike filed before the NLRC had been initially resolved in favour of the union, all RDEU members were terminated following more recent NLRC Resolutions on the subject, the Committee requests the Government to provide a copy of these NLRC resolutions and to keep it informed of the outcome of the ongoing appeal proceedings in this regard.*

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) Noting with concern that, of the three cases of alleged harassment involving military personnel, only the case of Rogelio Cañabano was deemed by RTMB-XI as freedom of association related, the Committee generally considers that the Government should ensure that, with respect to the working of the non-judicial monitoring bodies such as the IAC or the RTMBs, the criteria used for screening cases for its consideration should be broader than the judicial criteria used by the courts so as to not unduly exclude possible freedom of association cases and to ensure that labour activity or trade union function, even though other factors may be being considered, give rise to an in-depth review of the possible motivation. The Committee also requests the Government to take the necessary measures to ensure the full and swift investigation and resolution of the alleged acts of harassment of the above trade union leaders and members of KMU-affiliated unions, even if not committed by State actors, and to report on any investigation conducted and any remedies applied, including by the IAC and the AFP–HRO. The Committee also requests the Government to keep it informed on any forthcoming NTIPC–MB resolutions on the above cases.

(b) With reference to the relevant RTMB-XI recommendations and Resolution No. 1, series of 2016, the Committee trusts that the integration of human rights in the curriculum of the AFP and PNP and the conduct of related training and capacity-building activities for the latter, will be sustained, also integrating specific modules on freedom of association and labour rights in recruitment and in the curriculum and training of the PNP and AFP. The Committee expects once again that the Government will take the necessary accompanying measures, including the issuance of appropriate high-level instructions and training, to: (i) ensure the strict observance of due process guarantees in the context of any surveillance, interrogation or other operations by the army and police in a way that guarantees that the legitimate rights of workers' organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members;

and (ii) to restrict as far as possible prolonged military presence inside workplaces which is liable to have an intimidating effect on the exercise of trade union rights. The Committee encourages the Government to continue to take steps to raise awareness in the army and police about the need to disassociate the conduct of legitimate trade union activities from insurgency.

(c) With respect to the remaining three cases of alleged harassment not involving military personnel, the Committee generally trusts that the Government will establish fast-track procedures for freedom of association violations committed by non-state actors and requests to be kept informed of developments. More specifically, concerning the case regarding Vicente Barrios, the Committee strongly requests the Government to take all necessary measures to guarantee his security, particularly in view of the newly reported death threats directed against him and to report on the outcome of the proceedings instituted with respect to the most recent alleged act of harassment. As to the case concerning the RDEU, the Committee requests the Government to take the necessary measures to ensure the full and swift investigation and resolution of the alleged acts of harassment of trade union leaders and members of the RDEU, to provide a copy of the NLRC resolutions related to their termination and to keep it informed of the outcome of the ongoing appeal proceedings in this regard.

CASE NO. 3185

INTERIM REPORT

Complaint against the Government of the Philippines presented by
– the National Confederation of Transport Workers' Unions of the Philippines (NCTU)
– the Center of United and Progressive Workers of the Philippines (SENTRO) and
– the International Transport Workers' Federation (ITF)

Allegations: The complainant organizations allege the extrajudicial killings of three trade union leaders and denounce the failure of the Government to adequately investigate these cases and bring the perpetrators to justice. The complainants further allege the use of threats and murder attempts against a fourth trade union leader and his family, who have been forced into hiding, and denounces the Government's failure to adequately investigate this case and protect the victims. The failure to investigate and prosecute in these cases would have reinforced the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights

538. The Committee last examined this case at its October 2016 meeting, when it presented an interim report to the Governing Body [see 380th Report, paras 811–858, approved by the Governing Body at its 328th Session (November 2016)].

539. The Government forwarded additional observations in communications dated 3 April and 2 October 2017.

540. 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. Previous examination of the case

541. At its November 2016 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) Noting the multiple efforts made by the Government in recent years to combat impunity, the Committee requests the Government to continue to keep it informed of steps taken and envisaged to ensure a climate of justice and security for trade unionists in the Philippines, and, more specifically, to provide information relating to the establishment of the Tripartite Validating Team for the present case, its functioning and the outcome of its work.

(b) Welcoming that the RTMB Region XI in Davao City was tasked to gather additional information, for a second review by the IAC, on the murders of the three trade union

leaders Antonio "Dodong" Petalcorin, Emilio Rivera and Kagi Alimudin Lucman, the Committee trusts that its examination of this case will be made available to the IAC technical working group and requests the Government to keep it informed: (i) on the outcome of the second IAC review and, in case of a definitive exclusion from AO 35, on the precise reasons therefore; (ii) on the resolutions issued by the NTIPC concerning the three extrajudicial killings; and (iii) on the result of the tripartite verification of the murder of Mr Lucman.

(c) The Committee expects the Government to take all necessary measures so as to ensure that, regardless of the cooperation of the victims' relatives, the investigation and judicial examination of the above acts of extrajudicial killings advance successfully and without delay so as to identify, bring to trial, punish and convict the guilty parties so as to prevent the repetition of such acts. It requests the Government to keep it informed in this respect.

(d) With regard to the murder attempts and threats against the trade union leader Carlos Cirilo, the Committee invites the Government and the complainants to provide any additional information at their disposal. The Committee requests the Government to ensure in future the respect of the principle enunciated in its conclusions and hopes that the Government will take measures to speed up the investigation and judicial inquiry of this case and keep it informed in this regard.

(e) The Committee draws the special attention of the Governing Body to the serious and urgent nature of the matters dealt with in this case.

B. The Government's reply

542. In its communications dated 3 April and 2 October 2017, the Government provides general information on steps taken and updated information concerning the cases at hand.

543. As regards Antonio Petalcorin, the Government indicates in its communication dated 3 April 2017 that the alleged perpetrator has already been identified as Jay-Jay Gascon Vallesteros (sworn statement executed by Mr Capistrano III on 28 August 2013). The Philippine National Police (PNP) coordinated with the family of the victim, specifically with his wife and daughter, for the filing of a case against the suspect. Despite the efforts exerted to convince them, said family members still refused to cooperate. The reason for the lack of interest is unknown. Moreover, the family of Antonio Petalcorin is always out of the country. The PNP continued to exert efforts in investigating the case, and investigation and further follow-up investigations were conducted. However, the said investigations were adversely affected by the non-cooperation of the family of the victims and resulted in difficulty in case build-up. As an out-of-the-box solution, the Regional Tripartite Monitoring Body in Region XI (RTMB-XI) recommended that selected RTMB-XI members personally talk to the family of Mr Petalcorin as soon as they are back in the country and available. RTMB-XI further recommends that follow-up investigations continue and that the PNP periodically update the RTMB-XI on the said case. In its communication dated 2 October 2017, the Government then announces that a case for murder has been filed on 8 March 2017 against the suspects identified as Jay-Jay Gascon and Armie Zerudo Escandor with NPS Docket No. XI-02-INV-17-b-0258.

544. According to the update on the murder of Antonio Petalcorin provided by the Government in February 2017, the Office of the Ombudsman for Mindanao advised on 16 January 2017 that the complaint for grave misconduct filed by Mr Petalcorin against LTFRB Director Benjamin Go, Mr Carlos Cirilo and Ms Annie Cirilo, was dismissed on 19 November 2013 for lack of probable cause and thus lack of substantial evidence.

545. With respect to Emilio Rivera, the Government indicates that a case was already filed against the accused, Baltazar "Bobby" Namoc Mantica, who has a standing arrest warrant. However, the accused remains at large to date. Further intelligence gathering for possible location of the whereabouts of the accused is being pursued. RTMB-XI recommended that further

intelligence gathering to this end be continued, and that the PNP periodically update the RTMB-XI on the case.

546. According to the update provided by the Government in February 2017, the PNP exerted efforts in investigating the murder of Mr Rivera. As a matter of fact, the accused was already identified. The same suspect was indicted for the crime of murder with criminal case number 74,993-13-13, now archived at Regional Trial Court, 11th Judicial Region, Branch 6 Davao City.

547. Concerning Kagi Lucman, the Government refers to a prior report from the PNP which stated that close dialogue with the victim's family and possible witness had been initiated to obtain updates/information that might be helpful in the investigation, but the same remained futile. Reportedly, they migrated to an undisclosed place. Follow-up investigation confirmed that the wife of the victim was in Riyadh, Saudi Arabia, while another victim and possible witness, Mohmaden Ayunan Aloy, could not be located.

548. As to Carlos Cirilo, the Government states that follow-up investigation was conducted to locate possible witnesses who might have knowledge of the grenade-throwing incident at the victim's residence. However, there were still no witnesses who could provide information. Furthermore, Mr Cirilo had transferred to another residence after the said incident. The PNP continued to exert efforts in investigating the case, and investigation and further follow-up investigations were conducted. However, the said investigations were adversely affected because no witness could be found who could provide information on the incident, which resulted in difficulty in case build-up. RTMB-XI recommended that follow-up investigations be continued and that the PNP periodically update the RTMB-XI on the said case.

549. The Government adds that the PNP clarified that Mr Cirilo was not refused police escort. The police committed to check its records to determine whether there was a request for escort filed by Mr Cirilo. If there is a request, the police will verify reasons for the disapproval thereof in compliance with the guidelines in providing police protection; if there is none, this may be the reason why he was not provided with police escort.

550. The Government reiterates that all of the aforesaid cases are currently being handled and investigated through the regular process of criminal investigation and prosecution. Hence, the availability of reports relies heavily on police investigations and regular court proceedings, the progress of which may be affected by lack of material witnesses. According to the update provided by the Government in February 2017, the PNP states that the investigations of the above cases are adversely affected by the non-cooperation of the family of the victims. Despite the difficulty in case build-up, the PNP is earnestly conducting follow-up investigations of the said cases.

551. Lastly, the Government indicates, in its communication dated 2 October 2017, that the Department of Labor and Employment, together with the ILO Country Office for the Philippines and with the support of the EU Generalized Schemes of Preferences Plus, has embarked on a two-year technical cooperation project on freedom of association and collective bargaining, which aims to further improve the environment as well as the capacity of the tripartite partners towards better implementation and application of the right to freedom of association and collective bargaining in the Philippines, guided by specific strategic objectives. A one-day Tripartite Project Launch was held on 13 September 2017 in Manila, bringing together around 100 tripartite and social partners, especially the concerned government agencies, to discuss and agree on strategies to improve application of freedom of association principles and right to collective bargaining based on key Conventions ratified by the Philippines (i.e. ILO Conventions Nos 87 and 98). Part of the activity was the ceremonial signing by the tripartite partners of a Tripartite Manifesto of Commitment and Collective Effort to Sustain Observance and Further Improvement in the Application of the

Principles of Freedom of Association and Collective Bargaining, which commits the tripartite partners to promote and protect workers' rights at all times pursuant to the fundamental principles of freedom of association and collective bargaining by, among others, aligning national law and practice to these principles; to formulate and adopt a National Action Plan with identified key result areas and strategies to further improve the application of these principles in the Philippines; and to collaborate and actively work towards the implementation of the National Action Plan, and endeavour to efficiently and effectively attain the targets identified therein.

C. The Committee's conclusions

552. *The Committee notes that, in the present case, the complainants allege the extrajudicial killings of three trade union leaders and denounce the failure of the Government to adequately investigate these cases and bring the perpetrators to justice. The complainants further allege the use of threats and murder attempts against a fourth trade union leader and his family, who have been forced into hiding, and denounces the Government's failure to adequately investigate this case and protect the victims. According to the complainants, the failure to investigate and prosecute in these cases would have reinforced the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights.*

553. *The Committee notes the updated information submitted by the Government concerning the cases at hand.*

554. *The Committee observes in particular that a detailed and intricate framework of monitoring and investigative mechanisms, at both national and regional levels, continues to actively work on the cases of killings of trade unionists and other violence brought before the ILO supervisory bodies. The Committee also notes with interest the recent tripartite event for the purpose of launching a two-year technical cooperation project on freedom of association and collective bargaining, at which the tripartite partners signed the Tripartite Manifesto of Commitment and Collective Effort to Sustain Observance and Further Improvement in the Application of the Principles of Freedom of Association and Collective Bargaining. The Committee requests the Government to continue to keep it informed of further efforts made or envisaged to ensure a climate of justice and security for trade unionists in the Philippines. More specifically, the Committee asks the Government to provide information relating to the previously evoked Tripartite Validating Team established for the present case, its functioning and the outcome of its work.*

555. *The Committee recalls that the three murders under examination, like the vast majority of extrajudicial killings before the Inter-Agency Committee (IAC) on Extrajudicial Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons was created pursuant to Administrative Order No. 35 (AO 35), were found not to meet the criteria of AO 35, in particular as regards the condition that the victim was targeted and killed because of the actual or perceived membership, advocacy or profession. The Committee reiterates its previous view that the ultimate determination of the motivation for the killing can only be made by a court of law, whereas the threshold for setting out a possible motive related to the deceased's activism should not require more than a prima facie linking; and that, in the absence of evidence precluding any connection of the crime with the exercise of trade union activities, membership or office, and, to the contrary, in the specific context of the exercise of a legitimate trade union activity (e.g. the filing of a complaint), the killings of trade union leaders should be able to benefit from the resources and powers of the high-level IAC [see 380th Report, para. 854].*

556. *In light of the above, the Committee considers that the Government should ensure that, with respect to the working of the non-judicial monitoring bodies such as the IAC or the RTMBs,*

the criteria used for screening cases for its consideration should be broader than the judicial criteria used by the courts, so as to not unduly exclude possible freedom of association cases and to ensure that labour activity or trade union function, even though other factors may be being considered, give rise to an in-depth review of the possible motivation. The Committee trusts that its above considerations will be made available to the IAC technical working group and requests the Government to keep it informed: (i) on the outcome of the renewed review by the IAC of the murders of the three trade union leaders Antonio "Dodong" Petalcorin, Emilio Rivera and Kagi Alimudin Lucman and, in case of a definitive exclusion from AO 35, on the precise reasons therefore; and (ii) on any resolutions issued by the NTIPC-MB concerning the three extrajudicial killings.

557. *The Committee notes that the Government reiterates that the aforesaid cases of three murders and one attempted murder of trade union leaders are currently being handled and investigated through the regular processes of criminal investigation and prosecution, the progress of which is adversely affected by the non-cooperation of the family of the victims or the lack of material witnesses. The Committee reiterates once again that such crimes should, due to their seriousness, be investigated and, where evidence (not necessarily in the form of witnesses) exists, prosecuted ex officio without delay, regardless of desistance or disinterest of the parties to pursue the case, i.e. even in the absence of a formal criminal complaint being lodged by a victim or an injured party [see Case No. 2528: 359th Report, para. 1112; 364th Report, para. 949; and 370th Report, para. 81]. In this context, the Committee is pleased to note the most recent information that progress has been made in relation to the killing of Antonio Petalcorin with the identified suspects charged with murder on 8 March 2017. The Committee expects that the perpetrators will be brought to trial and convicted without further delay, and requests the Government to keep it informed of the progress made in this regard and to provide a copy of the relevant judgments as soon as they are handed down.*

558. *In view of the obstacles invoked by the Government to the investigation and prosecution of the remaining killings of trade unionists, the Committee generally requests the Government to take measures, if necessary of legislative nature, to ensure that crimes of such serious nature are investigated and (where evidence exists) prosecuted motu proprio, i.e. regardless of the desistance, disinterest or non-cooperation of the victim's family or other parties to pursue the case, and even in the absence of a formal criminal complaint being lodged by the injured party. Furthermore, the Committee trusts that the national criminal system will be assisted to increase the capacity to collect forensic evidence and move away from the de facto excessive reliance on testimonial evidence, so that the lack or retraction of witnesses no longer impedes progress in the investigation and prosecution of cases. More specifically, the Committee recalls that the Government has the duty to defend a social climate where respect for the law reigns as the only way of guaranteeing respect for and protection of individuals, and that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 34 and 44)]. The Committee expects the Government to take all necessary measures so as to ensure that the investigation and judicial examination of the three alleged acts of extrajudicial killings, even if not committed by state actors, advance successfully and without delay so as to identify, bring to trial and convict the perpetrators so as to prevent the repetition of such acts. It requests the Government to keep it informed in this respect.*

559. *With regard to the murder attempt and threats against trade union leader Carlos Cirilo who went into hiding with his family and the alleged failure of the Government to provide adequate protection, the Committee observes that the PNP is still in the process of verifying whether a request for police escort had been filed. Recalling that facts imputable to individuals bring into play the State's responsibility owing to the State's obligation to*

prevent violations of human rights, and that, consequently, governments should endeavour to meet their obligations regarding the respect of individual rights and freedoms, as well as their obligation to guarantee the right to life of trade unionists [see ***Digest****, op. cit., para. 47], the Committee generally requests the Government to take further measures to fully ensure the respect of this principle by effectively protecting potential victims, whether through formal or less formal avenues.*

The Committee's recommendations

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

(a) Noting with interest the recent tripartite event for the purpose of launching a two-year technical cooperation project on freedom of association and collective bargaining, at which the tripartite partners signed the Tripartite Manifesto of Commitment and Collective Effort to Sustain Observance and Further Improvement in the Application of the Principles of Freedom of Association and Collective Bargaining, the Committee requests the Government to continue to keep it informed of further efforts made or envisaged to ensure a climate of justice and security for trade unionists in the Philippines and combat impunity more effectively. More specifically, the Committee asks the Government to provide information relating to the previously evoked Tripartite Validating Team established for the present case, its functioning and the outcome of its work.

(b) Recalling that the three murders under examination, like the vast majority of extrajudicial killings before the IAC, were found not to meet the criteria of AO 35, the Committee considers that the Government should ensure that, with respect to the working of the non-judicial monitoring bodies such as the IAC or the RTMBs, the criteria used for screening cases for its consideration should be broader than the judicial criteria used by the courts, so as to not unduly exclude possible freedom of association cases and to ensure that labour activity or trade union function, even though other factors may be being considered, give rise to an in-depth review of the possible motivation. The Committee trusts that its considerations will be made available to the IAC technical working group and requests the Government to keep it informed: (i) on the outcome of the renewed review by the IAC of the murders of the three trade union leaders Antonio "Dodong" Petalcorin, Emilio Rivera and Kagi Alimudin Lucman and, in case of a definitive exclusion from AO 35, on the precise reasons therefore; and (ii) on any resolutions issued by the NTIPC-MB concerning the three extrajudicial killings.

(c) Observing that a case for murder has been filed on 8 March 2017 against the identified suspects in the killing of Antonio Petalcorin, the Committee expects that the perpetrators will be brought to trial and convicted without further delay, and requests the Government to keep it informed of the progress made in this regard and to provide a copy of the relevant judgments as soon as they are handed down.

(d) In view of the obstacles invoked by the Government to the investigation and prosecution of the remaining killings of trade unionists, the Committee

generally requests the Government to take measures, if necessary of legislative nature, to ensure that crimes of such serious nature are investigated and (where evidence exists) prosecuted motu proprio, i.e. regardless of the desistance, disinterest or non-cooperation of the victim's family or other parties to pursue the case, and even in the absence of a formal criminal complaint being lodged by the injured party.

(e) Furthermore, the Committee trusts that the national criminal system will be assisted to increase the capacity to collect forensic evidence and move away from the de facto excessive reliance on testimonial evidence, so that the lack or retraction of witnesses no longer impedes progress in the investigation and prosecution of cases. More specifically, the Committee expects the Government to take all necessary measures so as to ensure that the investigation and judicial examination of the alleged acts of extrajudicial killings, even if not committed by state actors, advance successfully and without delay so as to identify, bring to trial and convict the perpetrators so as to prevent the repetition of such acts. It requests the Government to keep it informed in this respect.

(f) The Committee requests the Government to take further measures to ensure the effective protection of potential victims, whether through formal or less formal avenues, in line with the principles enunciated in its conclusions.

(g) The Committee draws the special attention of the Governing Body to the serious and urgent nature of the matters dealt with in this case.

CASE NO. 3236

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

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

Allegations: The complainant organization alleges anti-union practices, including anti-union dismissals and harassment, carried out by management against the United Workers of Citra Mina Group of Companies Union and the failure of the authorities to take corrective measures

561. The complaint is contained in a communication from the International Union of Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) dated 29 September 2016.

562. The Government forwarded its response to the allegations in a communication dated 12 December 2016.

563. 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

564. In a communication dated 29 September 2016, the complainant organization, IUF, alleges blatant anti-union practices carried out by management against the United Workers of Citra Mina Group of Companies Union (UWCMGCU) and the failure of the Government to fulfil its obligations under Conventions Nos 87 and 98 in the face of such anti-union practices.

565. The complainant indicates that the Citra Mina Group of Companies (hereinafter, the group) describes itself as an entity based in the city of General Santos, which "houses" interconnected, integrated corporations under the same family ownership and produces fresh-frozen and processed tuna and other seafood products.

566. According to the complainant, workers at the enterprises forming the group began organizing a union in 2013 in response to the employer's abusive use of precarious employment contracts, poor health and safety conditions, inadequate wages and uncertainty over social security contributions, among other issues. Workers held a founding General Assembly meeting on 18 July 2013, which elected officers and adopted statutes. On 24 July 2013, the UWCMGCU was formally registered at the Department of Labour and Employment (DOLE). The union is affiliated to the national trade union organization, Centre of United and Progressive Workers (SENTRO), which is a member of the IUF.

567. The complainant alleges that, as of 2 August 2013, management responded aggressively to the union's formation by suspending and terminating active officers and members and escalating the anti-union harassment by firing 180 known or suspected union members on 16 September 2013.

568. The complainant states that the union filed on 18 September 2013 a formal complaint with the National Conciliation and Mediation Board (NCMB) for unfair labour practices and illegal anti-union mass terminations. The series of hearings at the NCMB in September and October 2013 failed to bring progress in resolving the dispute, despite the evident bad faith shown by the company, which only attended one of the three hearings. In the complainant's view, the NCMB did not act in accordance with its legal mandate to actively promote conciliation between the parties by pursuing all avenues to facilitate a resolution. Instead, at the hearing on 2 September 2013, the NCMB Director urged the union and its members to renounce their rights and accept the company's offer of separation payment. When the company, in later hearings, plainly stated its rejection of reinstatement and threatened legal action against the union should it continue to reject separation payment for the illegally terminated workers, the passivity of the NCMB ensured that the conciliation process was emptied of meaning and would produce no results.

569. According to the complainant, on 15 October 2013, union members voted, in the presence of NCMB and DOLE, to take strike action in support of their demands. On 18 October 2013, DOLE officials and the City Administrator for General Santos City met with union representatives and urged them not to proceed with the legally authorized strike, indicating that they would encourage reinstatement. On 24 October 2013, DOLE issued a status quo order to the union enjoining it from any action. The union commenced legal strike action on 13 November, holding peaceful pickets outside of the premises. On 15 and 16 November 2013, the DOLE held a series of meetings with the union and the company, all of which failed to achieve results, due to the company's ongoing threats to file legal action against the union for failing to accept separation pay and renounce their rights. On 20 November 2013, DOLE officials met with the union in advance of a tripartite meeting and promised action to

secure reinstatement of the dismissed union members. The tripartite meeting, however, failed, as the company again insisted that the union must accept separation pay or face criminal charges and fines. Two days later, on 22 November 2013, the company filed a legal petition to revoke the union's registration.

570. Furthermore, the complainant alleges that, on 3 December 2013, the governmental National Labor Relations Commission (NLRC) issued a temporary restraining order enjoining the union to stop its legally authorized industrial action. An NLRC official came to the picket line with 15 police escorts and threatened the strikers with arrest if they failed to end the picket. On 7 December 2013, emboldened by the manifest failure of the Government to protect the rights of the workers, management served notice to another 58 workers who had supported the strike. These workers were terminated in January 2014 as a consequence of exercising their right to join a union and to take strike action. NLRC hearings were held on 11 and 18 December 2013, in response to management charges brought against the union in connection with the strike. The company exploited the hearings to escalate pressure on the union, threatening new financial claims against the union in connection with the strike.

571. The complainant reports that, on 19 February 2014, in response to the company's petition to revoke the union's registration, DOLE Regional Office XII revoked the union's legal registration. Subsequently, a decision issued on 30 May 2014, by the DOLE's national legal office in Manila strongly rejected the grounds for the revocation and restored the union's legally registered status. The DOLE decision of 30 May 2014 states clearly that the revocation of the union's legal status was entirely without foundation in national law and established principles of freedom of association.

572. The complainant denounces that, notwithstanding the above, more than two years have since passed during which the Government has taken no meaningful action to reinstate the dismissed workers to their jobs, secure effective recognition of the union by the employer and encourage collective bargaining negotiations. While the mediation process through the NCMB is still formally pending, the consistent failure of the DOLE to exercise the authority with which it is legally empowered, effectively means a resolution to the conflict in conformity with the Government's obligations under Conventions Nos 87 and 98 is highly unlikely. A special hearing in the Philippines Congress in March 2015 highlighted a history and pattern of abusive employment practices and human rights violations at the group, but there continues to be no effective government action to resolve what has become the country's best-known conflict over fundamental trade union rights.

573. In conclusion, the complainant criticizes that, throughout the conflict, the Government has failed to act in accordance with its international obligations. Conciliation meetings under government auspices became an uncontested venue for threats against the union. No remedy has been offered to the 104 union members and supporters who continue to seek reinstatement and respect for their rights following the mass dismissals. Rather than defending the right to strike, the Government acted in concert with the police on 3 December 2013 in an attempt to halt legal industrial action. The regional DOLE's capricious decision to revoke the union's registration, though it was later restored, deprived the union of its legal status for some three months at a time of difficult challenges, and is characteristic of the Government's handling of this dispute since its inception. The workers of the group continue to be denied their basic rights.

B. The Government's reply

574. In its communication dated 12 December 2016, the Government indicated that the UWCMGCU is a union registered with the DOLE Regional Office XII on 24 July 2013 under registration certificate No. XII-GSC-07-2013-001. It is composed of more or less 200 regular rank-and-file employees mostly assigned in the Citra Mina Seafood Corporation

(hereinafter, the company), which is one of the four enterprises under the homonymous group, with its main office located at Brgy. Tambler, General Santos City. The group is engaged in the processing of tuna and its by-products, and has a total manpower of around 1,000 workers.

575. The Government states that, in 2013, the union officers requested the management to recognize it voluntarily as sole and exclusive bargaining agent. In response, the management asked for the list of union members and set of officers but the union provided only the names of the latter. Hence, the union was not voluntarily recognized.

576. The Government adds that, on 27 November 2013, the company filed a petition for cancellation of the certificate of trade union registration of the UWCMGCU on the grounds of misrepresentation, false statement and fraud when it registered itself as a labour organization to represent the rank-and-file employees of a non-existent corporation/employer (referring to the group). The company averred that the group is not a juridical person but a mere designation of affiliation of certain corporations. On 19 February 2014, the Regional Director of DOLE-XII issued an Order granting the petition and directing the delisting of UWCMGCU from the roster of legitimate labour unions. On 30 May 2014, the national DOLE Bureau of Labor Relations (BLR), on appeal, reversed the above Order. The BLR Decision specifically states that adoption of a union name bearing a non-juridical entity per se does not constitute a ground for cancellation of registration as provided under the Labor Code. It was stressed that any mistake in the designation or appellation of the employer unit does not cost the labour organization its union registration, especially if the mistake is unintentional or in good faith. BLR then upheld UWCMGCU as a legitimate labour organization entitled to the rights granted under the Labor Code.

577. As regards the conciliation–mediation proceedings, the Government indicates that, in October 2013, the termination of 180 workers of the company was reported to DOLE Regional Office XII – General Santos City Field Office, due to a slump in market demand, company reorganization and high cost of production. Subsequently, the union filed a notice of strike with the NCMB for union busting. On 15 October 2013, the strike vote was conducted with the majority of the workers in favour of a strike. Meetings and conciliation–mediations were conducted by DOLE and NCMB through the Regional Inter Agency Coordinating and Monitoring Committee (RICMC) for possible settlement but no agreement was reached. The union demanded voluntary recognition and reinstatement with back wages, while the management requested the conduct of consent election.

578. As to the alleged interference of the local government in the exercise of the right to self-organization of the company's workers, according to the Regional Conciliation and Mediation Board (RCMB) Region XII, this rooted from the establishment of a comfort room by picketers which had encroached on the road right of way in violation of the city ordinance and other pertinent laws. In this regard, the General Santos City Administrator issued an Order dated 22 May 2015 giving the picketers three days to self-demolish the illegal structures they built, otherwise, the city would be constrained to file appropriate charges and confiscate/demolish the said structures. The Office of the Assistant City Administration for Operation certified that the Order dated 22 May 2015 was not meant to curtail the right of workers to picket and to self-organize, and assured that the Local Government Unit (LGU) of General Santos City would not demolish said structures in the picket line.

579. The Government also states that, on 31 July 2015, the management filed a case against the workers before the NLRC Subregional Arbitration Branch XII (NLRC-RAB XII) for illegal strike. At present, the case is thus under compulsory arbitration. As per information from NLRC-RAB XII, the decision is about to be released by the Labor Arbiter.

580. Most recently, on 25 April 2016, the company proposed to the union the reinstatement of 12 workers with two-year length of service credit. The management also offered the

reinstatement of another 84 workers but without two-year length of service credit. The union requested time to confer with their lawyer and submit a written counterproposal. However, on 31 August 2016, the union informed the RCMB that they would not submit a counterproposal to the offer submitted by management. This led to a deadlock.

581. The Government also mentions that, parallel to the foregoing efforts, the DOLE continued to provide assistance to a number of displaced workers and their families even throughout the pendency of the conciliation proceedings and labour case, for example, the DOLE provided fund assistance and emergency employment to 61 of the displaced workers of the company for ten working days from 24 October to 8 November 2013 in close coordination with the LGU of General Santos City; and released the DOLE Kabuhayan Starter Kits amounting to 817,899 Philippine pesos (PHP) (US$16,000) to 78 of the displaced workers on 26 April 2014 in General Santos City. The Government adds that DOLE also granted a livelihood check to 148 of the displaced workers on 10 March 2015 under the DOLE Integrated Livelihood and Emergency Employment Program. A total of PHP2,040,000 (approximately $40,000) worth of livelihood were released through the Alliance of Progressive Labor (APL) as the Accredited Co-Partner for the displaced workers Tuna Handline Project. Four months after being awarded the grant, the displaced fishers from General Santos City have completed the construction of three mother boats and several "pakura" or small boats for their hand-line fishing project. These displaced workers include a number of repatriated fishers who were apprehended on 26 August 2014 in North Maluku for illegally fishing in Indonesian waters. The project is expected to earn gross sales of PHP1,000,000 (approximately $20,000) every fishing trip of one to two months, and the sharing scheme will be under a socialized system. The fishers' share in the project's income will automatically reflect deductions for their social security schemes. To ensure the project's success, the DOLE provides continued support, including technical assistance on business management, productivity and innovation, and occupational safety and health; and monitoring, and coordination with its convergence partners, namely, Department of Trade and Industry for marketing and packaging; Department of Agriculture and its agencies, the Bureau of Fisheries and Aquatic Resources; the Maritime Industry Authority (MARINA) and Philippine Coast Guard; Department of Science and Technology; Technical Education and Skills Development Authority for skills training, certification, and assessment; and LGUs through the Department of Interior and local government.

582. More generally, in an effort to further strengthen and enhance the rights of workers in the fishing industry, the DOLE has issued Department Order No. 156-16, series of 2016 (D.O. 156-16), providing the rules and regulations governing the working and living conditions of fishers on board fishing vessels engaged in commercial fishing operations. The issuance was formulated in cooperation with the tripartite partners and took effect on 1 July 2016. This applies to fishing vessel owners, fishers, and captains or masters on board Philippine-registered fishing vessels engaged in commercial fishing operations in the Philippine or international waters. The new legislation mandates that the engagement of Filipino fishers must be bound by an employment agreement in a language or dialect understandable to the workers, and delineating the living and working conditions on board commercial fishing vessels. Fishers covered by the new order are, inter alia, entitled to paid maternity, paternity, parental, and solo parents leave, including paid leave of ten days if they are victims of violence; and retirement pay upon reaching the age of 60. To significantly address cases of child labour in the industry, D.O. 156-16 strictly sets a minimum age of 18 for a fisher to be qualified to work on board commercial fishing vessels. Moreover, no fisher shall work on board a fishing vessel without a valid medical certificate issued by a public health facility or any medical facility duly accredited by the Department of Health. Fishers must also be provided with adequate specific instructions and applicable basic safety and health training as a preventive measure to occupational accidents.

583. Lastly, the Government highlights that it fully recognizes the rights and welfare of the workers in the fishing and canning industry, as exemplified in its efforts to resolve the labour

dispute, and similarly address all facets of industry-specific concerns. The Government, through the DOLE, shall continue with the performance of its mandate to render all forms of assistance and services possible, from conciliation and arbitration up to out-of-the-box livelihood assistance, to promote decent work in the fishing and canning industry and protect the workers' exercise of their right to self-organization.

C. The Committee's conclusions

584. *The Committee notes that, in the present case, the complainant organization alleges anti-union practices, including anti-union dismissals and harassment, carried out by management against the UWCMGCU and the failure of the authorities to take corrective measures.*

585. *The Committee notes the complainant's allegation that, as of 2 August 2013, management responded aggressively to the registration on 24 July 2013 of the UWCMGCU with DOLE by suspending and terminating trade union officers and active members, and subsequently dismissing 180 known or suspected union members on 16 September 2013; whereas the Government indicates that the reported grounds for the terminations included a decline in market demand, company reorganization and high cost of production. As to the conciliation–mediation proceedings, the Committee observes that the Government does not contest the complainant's allegation that the NCMB Director urged the union and its members from the start to waive their rights and accept the company's offer of separation pay, and that, due to the NCMB's subsequent passivity, the meetings produced no results and became a venue for management threats against the union. While taking due note of the Government's efforts to provide assistance to a number of displaced workers and legislative measures to protect the industry's workers, the Committee cannot but regret that, notwithstanding a considerable lapse of time (more than four years), the serious allegation of mass terminations on grounds of union foundation or membership did not give rise to a more active and effective follow-up by the Government aiming at the comprehensive resolution of the concrete dispute.*

586. *The Committee recalls that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 771].*

587. *The Committee requests the Government to conduct an independent inquiry into the allegation that more than 180 workers were terminated on the grounds of their involvement in the establishment of the union or their affiliation to the union. Should it be found that they were dismissed for anti-union reasons, the Committee requests the Government to take, as a matter of urgency, the necessary measures to ensure their full reinstatement without loss of pay. In the event that reinstatement is found to be no longer possible, for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union officers and members concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. In this regard, and with reference to the deadlock reached according to the Government in 2016 due to non-acceptance by the union of the latest company offer, the Committee encourages the Government to actively intercede with the parties, including within the framework of the ongoing conciliation–mediation proceedings, with a view to promoting a mutually satisfactory solution to this enduring dispute and related hardship.*

588. *Furthermore, the Committee notes the complainant's allegation that, following the commencement of legal strike action on 13 November 2013, 58 workers supporting the strike were served notice by management on 7 December 2013 and terminated in January 2014.*

*The Committee observes that the Government does not provide any information in this regard. Recalling that the use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association [see **Digest**, op. cit., para. 666], the Committee requests the Government to initiate an independent inquiry into the allegation that the 58 workers were dismissed for having exercised their right to strike, and if found to be true, to take the appropriate remedial measures. The Committee also requests the Government to provide information as to the outcome of the compulsory arbitration proceedings before the NLRC concerning the illegality of the strike.*

589. *With respect to the management's petition to revoke the registration of the UWCMGCU for reasons mainly related to the union's title and the Order of DOLE Regional Office XII dated 19 February 2014 granting the petition, the Committee welcomes the DOLE–BLR Decision dated 30 May 2014 reversing the Order in accordance with the recently amended Department Order 40-03 and holding that cancellation proceedings must be free from rigid technicalities of law and procedure and that any mistake in the designation or appellation of the employer unit does not cost the labour organization its union registration. The Committee further observes the complainant's indication that, between 19 February and 30 May 2014, the UWCMGCU had been delisted from the roster of legitimate labour unions and divested of its rights and privileges as a legitimate labour union, at a time of difficult challenges. In this regard, the Committee recalls that, in view of the serious consequences which dissolution of a union involves for the occupational representation of workers, the Committee has considered that it would appear preferable, in the interest of labour relations, if such action were to be taken only as the last resort, and after exhausting other possibilities with less serious effects for the organization as a whole [see **Digest**, op. cit., para. 678]. In light of the above, the Committee trusts that the Government will take the necessary measures so that, in the future, appeals of administrative dissolution orders have a suspensive effect.*

590. *Lastly, on a more general note, the Committee invites the Government, when interacting with the parties, to seek to foster a climate of dialogue and trust between the union and management, with a view to restoring harmonious labour relations and promoting meaningful collective bargaining.*

The Committee's recommendations

591. ***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 conduct an independent inquiry into the allegation that more than 180 workers were terminated on the grounds of their involvement in the establishment of the union or their affiliation to the union, and, should it be found that they were dismissed for anti-union reasons, to take, as a matter of urgency, the necessary measures to ensure their full reinstatement without loss of pay, or, in the event that reinstatement is found to be no longer possible, for objective and compelling reasons, to take the necessary measures to ensure that the union officers and members concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. In this regard, and with reference to the deadlock reached according to the Government in 2016, the Committee encourages the Government to actively intercede with the parties, including within the framework of the ongoing conciliation–mediation proceedings, with a view to promoting a mutually satisfactory solution to this enduring dispute and related hardship.

(b) The Committee requests the Government to initiate an independent inquiry into the allegation that 58 workers were dismissed for having exercised their right to strike, and if found to be true, to take appropriate remedial measures. It also requests the Government to provide information as to the outcome of the compulsory arbitration proceedings before the NLRC concerning the illegality of the union's strike action.

(c) The Committee trusts that the Government will take the necessary measures so that, in the future, appeals of administrative dissolution orders have a suspensive effect.

(d) The Committee invites the Government, when interacting with the parties, to seek to foster a climate of dialogue and trust between the union and management, with a view to restoring harmonious labour relations and promoting meaningful collective bargaining.

CASE NO. 3113

INTERIM REPORT

Complaint against the Government of Somalia presented by
– the Federation of Somali Trade Unions (FESTU)
– the National Union of Somali Journalists (NUSOJ) and
– the International Trade Union Confederation (ITUC)

Allegations: The complainant organizations allege serious threats, acts of intimidation and reprisals against members and leaders of the National Union of Somali Journalists (NUSOJ) and the lack of adequate responses by the Federal Government of Somalia

592. The Committee last examined this case at its October–November 2016 meeting where it presented an interim report to the Governing Body [see 380th Report, approved by the Governing Body at its 328th Session (October–November 2016), paras 898–935].

593. The National Union of Somali Journalists (NUSOJ) sent additional information in relation to the complaint in a communication dated 31 May 2017.

594. The Government sent a communication dated 10 September 2017 in relation to the case.

595. Somalia 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

596. In its previous examination of the case at its October–November 2016 meeting, the Committee made the following recommendations [see 380th Report, para. 935]:

(a) The Committee expects the Government to abide by the ruling of the Supreme Court concerning the leadership of the NUSOJ and it urges the Government to refrain from any further interference in the NUSOJ and FESTU internal affairs, and ensure that the elected leaders of the unions – in particular Mr Osman, until otherwise indicated by the union members themselves – are free to exercise the mandate given to them by their members in accordance with the unions' by-laws. The Committee trusts that the Government will recognize the leadership of the NUSOJ and the FESTU under Mr Omar Faruk Osman without delay.

(b) The Committee is deeply concerned by the complainants' allegation that the Chief Justice, namely Dr Aidid Abdullahi Ilkahanaf, who handed down the ruling in favour of Mr Osman – and against the Government's position – has since been sacked by presidential decree. Observing that an independent judiciary is essential to ensuring the full respect for the fundamental freedom of association and collective bargaining rights, the Committee urges the Government to ensure full respect for this principle and to ensure that Dr Aidid Abdullahi Ilkahanaf is not subjected to threats for discharging his duties in accordance with the mandate bestowed upon him. The Committee requests the Government to reply in detail to this allegation.

(c) The Committee urges the Government to provide without delay full explanations on the reasons for the arrest on 15 October 2016 of Mr Abdi Adan Guled, Vice-President of the NUSOJ.

(d) The Committee urges the Government to provide without delay detailed information on any police investigation and judicial inquiry in relation to the assassination attempt against Mr Osman on 25 December 2015. More generally, the Committee urges the Government to ensure the protection and guarantee the security of the FESTU and the NUSOJ leaders and members, and establish a full and independent judicial inquiry in the event of any complaints relating to intimidation and threats affecting them.

(e) The Committee calls on the Government to take all necessary measures to investigate urgently the assassination of Mr Abdiasis Mohamed Ali, a member of the NUSOJ, and to keep it informed of its outcome.

(f) The Committee urges the Government to ensure full respect of principles related to the right to establish organizations of their own choosing without previous authorization and to refrain from any initiative or connection in the setting up of a trade union.

(g) The Committee firmly recalls that union leaders should not be subject to retaliatory measures, in particular, arrest and detention without trial, for exercising their rights which derive from the ratification of ILO instruments on freedom of association or for having lodged a complaint with the Committee. The Committee expects the Government to ensure full respect of this principle.

(h) The Committee recalls to the Government that it may wish to avail itself of the technical assistance of the Office in order to determine the appropriate measures to address effectively its outstanding recommendations.

B. Additional information from the complainants

597. In a communication dated 31 May 2017, the NUSOJ transmitted a copy of a legal advice dated 11 May 2017 from the State Attorney General to the Ministry of Labour and Social Affairs concerning the present case before the Committee. In its communication in reply to the request from the Ministry of Labour and Social Affairs, the State Attorney General advises the Government to comply with the recommendations made in October 2016 by the Committee on Freedom of Association in relation to the case. Furthermore, the State Attorney General reminds the Government of the independent nature of trade unions and other civil societies' organizations which should be free to organize themselves and elect their own representatives without any interference from the Government, as long as they do not disturb general security. The NUSOJ denounces the fact that despite the legal advice, the Government still fails to implement the recommendations of the Committee.

598. The NUSOJ further indicated however that Mr Omar Faruk Osman, its Secretary-General, was summoned at the Attorney General's Office on 29 May 2017 and was told verbally that he would be interrogated on two accusations levelled against him. He was requested to come back to the Attorney General's Office on 31 May. He was then given the official letter of summon containing the two following accusations: (i) organization on 3 May 2017 of a commemoration of world press freedom at the Diplomatic Hotel without authorization from the Ministry of Information; and (ii) issue on 6 May 2017 of an abusive statement offending and defaming the Minister of Information of the Federal Government.

599. According to the complainant, it is clear that the Ministry of Information is behind the accusations made and is interfering behind the scene. The complainant indicated that Mr Osman appeared before the Attorney General's Office and replied to the accusations confidently. He recalled in particular that according to the national Constitution, the highest law of the land, there was no need to request or obtain any authorization from a ministry to hold a meeting.

C. The Government's reply

600. In its communication dated 10 September 2017, the Government acknowledges that it has sought advice from the State Attorney General over the case and confirms that the latter wrote to relevant Ministries and guided concerned authorities to comply with the recommendations of the Committee. The Government states that it accords a great weight to the legal advice.

601. The Government further states that there is no disagreement that the Federation of Somali Trade Unions (FESTU), led by Mr Omar Faruk Osman, is the most representative workers' organization. It also acknowledges Mr Osman as the leader of the NUSOJ. However, the Government is seeking to resolve political differences between the FESTU and policymakers within the Government.

602. Finally, the Government requests the assistance of the ILO to facilitate a constructive dialogue and to find a solution to the long standing dispute in a harmonious manner.

D. The Committee's conclusions

603. *The Committee recalls that it has been considering this serious case of alleged threats, acts of intimidation and reprisals against members and leaders of the FESTU and the NUSOJ on several occasions. In view of the seriousness of the matters raised and the apparent lack of understanding from part of the Government as to their fundamental importance, the Committee decided to have recourse to paragraph 69 of its procedure and invited the Government to come before it to expose the steps taken in relation to the pending matters for which it had not been providing adequate responses. The Government had provided a written communication in March 2016 and made an oral presentation before the Committee at its meeting of May–June 2016.*

604. *The Committee notes the information provided by the complainant to the effect that: (i) despite a legal notice issued on 11 May 2017 by the State Attorney General advising the Ministry of Labour and Social Affairs to comply with the recommendations made in October 2016 by the Committee on Freedom of Association in relation to the case, to date the Government has failed to implement those recommendations; and (ii) Mr Omar Faruk Osman, Secretary-General of both the FESTU and the NUSOJ, was summoned at the Attorney General's Office on May 2017 and received a letter whereby he was accused of organizing on 3 May 2017 a commemoration of world press freedom without authorization from the Ministry of Information; as well as of issuing on 6 May 2017 a statement offending and defaming the Minister of Information. The Committee notes that in the complainant's*

view, the Ministry of Information is behind these accusations which proves the constant retaliatory acts of the authorities against the legitimate trade union activities of NUSOJ. The Committee urges the Government to provide detailed observations on these accusations against Mr Omar Faruk Osman as well as information on any follow-up to this procedure.

605. *The Committee takes due note of the communication dated 10 September 2017 whereby the Government: (i) acknowledged that the Ministry of Labour and Social Affairs sought advice from the State General Attorney over the case and that the latter wrote to relevant Ministries and guided concerned authorities to comply with the recommendations of the Committee; (ii) acknowledged that the FESTU, led by Mr Omar Faruk Osman, is the most representative workers organization in the country and that Mr Osman is the leader of the NUSOJ; (iii) indicated that it was seeking to resolve political differences between the FESTU and policymakers within the Government; and (iv) requested the assistance of the ILO to facilitate a constructive dialogue and to find a solution to the long-standing dispute in a harmonious manner.*

606. *The Committee welcomes the commitment of the Government to engage in finding a solution to this case which contains allegations of a very serious nature (arrest of the NUSOJ Vice-President; assassination attempt against the NUSOJ Secretary-General; assassination of a journalist, member of NUSOJ; interference from the authorities in the setting-up of a trade union). Consequently, the Committee reiterates its previous recommendations in this regard and expects the Government to rapidly provide information on the measures taken to ensure that the FESTU and the NUSOJ can fully develop their trade union activities without hindrance and that independent judicial inquiries are promptly instituted in the event of any complaints of interference, threats or acts of violence against trade union members and leaders, this in order to fully uncover the underlying facts and circumstances, identify those responsible, punish the guilty parties, and prevent the repetition of such acts.*

607. *The Committee trusts that the Government will benefit as soon as possible from the Office's technical assistance in order to address effectively its outstanding recommendations.*

The Committee's recommendations

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

(a) While welcoming the commitment of the Government to engage in finding a solution to this case containing allegations of a very serious nature, the Committee reiterates its previous recommendations and expects the Government to rapidly provide information on the measures taken to ensure that the FESTU and the NUSOJ can fully develop their trade union activities without hindrance and that independent judicial inquiries are promptly instituted in the event of any complaints of threats or acts of violence against trade union members and leaders, this in order to fully uncover the underlying facts and circumstances, identify those responsible, punish the guilty parties, and prevent the repetition of such acts.

(b) The Committee requests the Government to provide its reply to the allegations that the Chief Justice, namely Dr Aidid Abdullahi Ilkahanaf, who handed down a ruling in favour of Mr Osman – and against the Government's position – was sacked by presidential decree. It also requests the Government to inform of the current duties of Dr Aidid Abdullahi Ilkahanaf, in particular whether he remained in the judiciary.

(c) The Committee urges the Government to provide without delay full explanations on the reasons for the arrest on 15 October 2016 of Mr Abdi Adan Guled, Vice-President of the NUSOJ.

(d) The Committee urges the Government to provide without delay detailed information on any police investigation and judicial inquiry in relation to the assassination attempt against Mr Osman on 25 December 2015.

(e) The Committee urges the Government to provide information on the outcome of the investigation on the assassination of Mr Abdiasis Mohamed Ali, a member of NUSOJ.

(f) The Committee urges the Government to provide detailed observations on the accusations presented in May 2017 against Mr Omar Faruk Osman as well as information on any follow-up to this procedure.

(g) The Committee trusts that the Government will benefit as soon as possible from the Office's technical assistance in order to address effectively its outstanding recommendations.

CASE NO. 2949

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

Complaint against the Government of Swaziland presented by
– the Trade Union Congress of Swaziland (TUCOSWA) and
– the International Trade Union Confederation (ITUC)

Allegations: The complainant denounces its deregistration by the Government and the systematic interference by security forces against its activities

609. The Committee last examined this case at its March 2016 meeting where it presented an interim report to the Governing Body [see 377th Report, approved by the Governing Body at its 326th Session (March 2016), paras 419–441].

610. The Government sent its observations in a communication dated 12 September 2017.

611. Swaziland 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

612. In its previous examination of the case at its March 2016 meeting, the Committee made the following recommendations [see 377th Report, para. 441]:

(a) The Committee trusts that, alongside the strengthening of tripartite consultations and social dialogue, the Government will endeavour to ensure that all the workers' and employers' federations, either seeking for registration or duly registered under the

amended law, may fully exercise their trade union rights, including the right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests without any interference or reprisal against their leaders, in accordance with the principles of freedom of association.

(b) The Committee urges the Government to provide its observations on the allegations of arrest and conviction of two trade unionists of the Swaziland National Association of Teachers (SNAT) in February 2016 for participating in a protest action called by public sector unions.

(c) The Committee trusts that the Commissioner of Labour will endeavour to finalize the registration of the ATUSWA without delay as part of the drive for the strengthening of the national social dialogue since the amendment of the IRA in May 2015 and requests the Government to keep it informed of the steps taken in this respect.

B. The Government's reply

613. In a communication dated 12 September 2017, the Government provided detailed information with regard to the pending matters.

614. The Government recalled that, pursuant to the amendment of the Industrial Relations Act (IRA) through Act No. 11 of 2014, a number of employers' and workers' organizations applied for registration and were duly registered. These include: the Trade Union Congress of Swaziland (TUCOSWA); the Federation of Swaziland Trade Unions (FESWATU); the Federation of Swaziland Employers and Chamber of Commerce (FSE/CC); and the Federation of the Swazi Business Community (FESBC). These organizations participate in the tripartite consultations and social dialogue structures of the country, such as the Labour Advisory Board (LAB) and the National Steering Committee on Social Dialogue (NSCSD). They also exercise their right to defend their members' occupational interests by means of protest actions and demonstrations without any interference from the Government.

615. The Government further indicated that on the aspect of union leaders suffering any threats of reprisal, criminal or civil prosecutions for any criminal, malicious or negligent acts committed by any person during peaceful protest actions as per the provisions of the impugned section 40(13) of the IRA, the amendment Act of 2014 deleted the impugned subsection (13) of section 40; hence removing the threat of criminal prosecution or delictual liability from trade union leaders for any criminal, malicious or negligent acts committed by any person during peaceful protest actions. Liability in respect of any criminal, malicious or negligent acts or conduct occurring during peaceful protest actions is now only limited to the actual perpetrator(s) and not the organizers or trade union leaders, as it were.

616. With regard to the allegations of arrest and conviction of two trade unionists of the Swaziland National Association of Teachers (SNAT) in February 2016, the Government indicated that, in February 2016, TUCOSWA called for demonstrations in the country's major cities, including the capital city, Mbabane. It is common that a majority of the public sector trade unions, including SNAT as an affiliate of TUCOSWA, participated in the said protest action.

617. The Government asserted that the said protest action was characterized by elements of criminal and malicious conduct on the part of certain participants. As a result of these criminal and malicious acts, two participants in that protest action, namely Mr Mbongwa Earnest Dlamini and Mr Mcolisi Ngcamphalala were eventually arrested with criminal charges preferred against them by the Director of Public Prosecutions (DPP) for perpetrating criminal and malicious acts in contravention of Public Order Act No. 17 of 1963. The Government provided a verbatim from the charge sheet under Criminal Case No. 101 of 2016 (Magistrates' Court – Mbabane) which read:

> Contravening Section 11(1)(a) and (c) read together with Section 11(2)(b) of the Public Order Act No. 17 of 1963 in that upon or about the 3rd February, 2016 and at or near Mbabane

in the Hhohho region, the said accused persons acting jointly and in furtherance of a common purpose, did wilfully and unlawfully place big stones on the road to the Cabinet offices of Swaziland with the intent to or knowing it to be likely that the act will impair the usefulness or efficiency or prevent or impede the working of the said road which is used by Government and did thereby contravene the said Act.

618. The accused persons, who are legally represented in this criminal prosecution by a legal practitioner of their own choice, pleaded not guilty to the said offence and they have not as yet been convicted as the criminal prosecution of their case is still pending at the Mbabane Magistrates' Court. The next session for the continuation of the criminal trial is set for 25 September 2017. The Government specified that the arrest and prosecution of the two individuals had nothing to do with their trade union activities. The two accused persons remain innocent until proven guilty by the court of law after the completion of the criminal trial.

619. Finally, the Government informed that the registration of the Amalgamated Trade Union of Swaziland (ATUSWA) was finalized in May 2016 by the issuance of the certificate of registration No. 001/2016.

C. The Committee's conclusions

620. *The Committee recalls that this case concerned originally the revocation of the registration of a workers' federation by the Government and allegations of systematic interference by security forces against trade union activities. Previously, the Committee had welcomed the adoption of the Industrial Relations (Amendment) Act, 2014, introducing provisions concerning the registration of employers' and workers' federations, and consequently the registration of the TUCOSWA and other employers' and workers' federations in May–June 2015. The Committee also welcomed the indication that these federations were represented in consultative tripartite structures that have been established. However, the Committee expressed concern over reports of systematic interference of the security forces in trade union meetings.*

621. *The Committee observes that many of these issues, in particular as regards the interference and intimidation of trade unionists during peaceful trade union activities, were raised by the Committee on the Application of Standards of the International labour Conference at its 105th Session (May–June 2016) when it discussed the application by Swaziland of Convention No. 87. In its conclusions, the Committee also invited the Government to accept a direct contacts mission which visited the country in May 2017 and produced a report.*

622. *The Committee notes from the information made available by the Government to the direct contacts mission the publication (in December 2015) of a Code of good practice for managing industrial and protest action, and the tripartite workshop on the Code organized by the ILO in July 2016. The Committee, welcoming this positive development, encourages the Government to continue to take all necessary measures to allow workers' and employers' organizations to fully exercise their trade union rights, including the right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests, without interference or threat of reprisal against their members and leaders.*

623. *With regard to the allegations of arrest of two trade unionists of the SNAT in February 2016, the Committee notes from the Government's report that, in the context of a countrywide demonstration called for by TUCOSWA, with the participation of all public sector trade unions including SNAT, two participants in that protest action, namely Messrs Mbongwa Earnest Dlamini and Mcolisi Ngcamphalala were arrested with criminal charges preferred against them by the Director of Public Prosecutions for perpetrating criminal and malicious acts in contravention of the Public Order Act. According to the verbatim from the charge of the Magistrates' Court, the two individuals did wilfully and unlawfully place big stones on*

the road to the Cabinet offices of Swaziland with the intent to, or knowing it to be likely that the act will impair the usefulness or efficiency or prevent or impede the working of the said road which is used by the Government and did thereby contravene the Public Order Act. The Committee notes the indication that the accused persons were legally represented in this criminal prosecution by a legal practitioner of their own choice and pleaded not guilty to the said offence. Noting that the case is still pending at the Mbabane Magistrates' Court, with the next session for the continuation of the trial set for 25 September 2017, the Committee requests the Government to keep it informed of the court ruling in this case.

624. *Finally, the Committee welcomes the indication from the Government that the registration of the Amalgamated Trade Union of Swaziland (ATUSWA) was finalized in May 2016 by the issuance of the certificate of registration.*

The Committee's recommendations

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

(a) The Committee, welcoming reports of positive development, encourages the Government to continue to take all necessary measures to allow workers' and employers' organization to fully exercise their trade union rights, including the right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests, without interference or threat of reprisal against their members and leaders.

(b) The Committee requests the Government to keep it informed of the court ruling in the case of Messrs Mbongwa Earnest Dlamini and Mcolisi Ngcamphalala, members of the SNAT, who were arrested with criminal charges preferred against them for perpetrating criminal and malicious acts in contravention of the Public Order Act during a protest action.

CASE NO. 3196

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

Complaint against the Government of Thailand presented by
– the Suzuki Motors Thailand Workers' Union (SMTWU) and
– the Thailand Confederation Trade Union (TCTU)

Allegations: The complainants allege dismissal of trade union activists after their participation in submitting of demands for collective bargaining to the employer, a motor vehicle company, the refusal by the employer to reinstate the workers despite the decisions to that effect of the Labour Relations Committee and the Central Labour Court, demotion of the SMTWU President and the prohibition imposed on him to access the company's premises

626. The complaint is contained in communications dated 2 March and 17 May 2016, and 13 January and 11 July 2017 submitted by the Suzuki Motors Thailand Workers' Union (SMTWU) and the Thailand Confederation Trade Union (TCTU).

627. The Government sent its observations in communications dated 24 February, 27 March and 27 September 2017.

628. Thailand has not 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), or the Workers' Representatives Convention, 1971 (No. 135).

A. The complainants' allegations

629. By their communications dated 2 March 2016, the TCTU and the SMTWU (TCTU's affiliate) allege dismissal of workers involved in submitting collective bargaining demands to the employer, Suzuki Motors (Thailand) Co. Ltd (hereafter, "the company"). In these and subsequent communications, the complainants provide the following chronology of alleged events.

630. On 17 December 2013, a group of workers formulated and submitted to the employer a set of demands regarding working conditions, wages and bonuses, in compliance with the procedures provided for in the Labour Relations Act (LRA).

631. On 18 December 2013, the workers filed for the registration of a trade union.

632. On 20 December 2013, the workers' and management's representatives negotiated for the first time on the demands, but failed to come to an agreement. Only one topic was discussed and the remaining 12 demands were rejected by the employer.

633. On 21 December 2013, in accordance with the labour legislation, workers' representatives filed a labour dispute case with a conciliation officer as the company's representatives repeatedly refused to return to the negotiating table.

634. On 25 December 2013, after a conciliation settlement, an agreement on bonuses was signed. It was further agreed to keep the existing labour conditions and not to consider the actions taken during the negotiation as violation of the workplace regulations. During the mediation, the company representatives agreed not to harass or dismiss workers who were involved in submitting the demands.

635. On 26 December 2013, at 10 a.m., the workers were informed of the successful registration of the SMTWU. At 4 p.m., nine union leaders and one worker who had filed the demands and took the lead in the registration attempts were dismissed by the employer on various charges, including committing a crime with the intention to cause damages to the company, theft, neglect of duty, violation of work regulations, defamation of the company, incitement of workers, taking the company's resources by sending electronic mails during the working time.

636. On 14 January 2014, the dismissed workers filed a complaint of unfair dismissal with the Labour Relations Committee (LRC).

637. On 9 April 2014, the LRC ruled in favour of nine workers stating that the dismissal violated section 121(1) of the LRA and ordered their reinstatement. While one worker's complaint was rejected, the complainants consider that as he was fired for the same reason as the other nine workers, the reinstatement order should also apply to him. On 15 March 2015, he committed suicide. The complainants consider that his heirs should thus receive full compensation (in lieu of reinstatement).

638. The complainants further allege that the employer failed to comply with the LRC's order and indicate that in June 2014, the company filed an appeal against the LRC decision with the Central Labour Court (CLC). On 25 May 2015, the CLC upheld the LRC's reinstatement order. In particular, the complainants indicate that it held that the employer must: reinstate nine workers to the same positions and retain them under the same working conditions; pay bonus under the collective bargaining agreement signed on 25 December 2013, including a payment of 15 per cent interest per year; pay social benefits due, including 15 per cent interest per year; and adjust annual wage of 2013 (at the rate of 6 per cent of worker's salary, taking into account worker's position under the wage structural framework).

639. On 30 June 2015, the said nine workers wrote a letter to the employer requesting to return to work. The employer did not reply. On 7 July 2015, the TCTU submitted a letter, on behalf of the workers, to the employer requesting to reinstate the workers; but once again to no avail.

640. On 7 July 2015, the company appealed the CLC decision to the Supreme Court.

641. On 5 January 2016, the acting President of the SMTWU was demoted. On 17 March 2016, during a meeting with the Human Resources Department, he received a letter signed by the company's President ordering him to immediately stop working and forbidding him from entering the factory. This resulted in the loss of his overtime pay, paid leaves and other benefits. The complainants point out, however, that the fact that he is still receiving wages precludes him from suing the employer because this situation does not violate the law.

642. The complainants allege that the company continues to refuse to comply with the reinstatement orders of the LRC and the CLC and to prevent the SMTWU President from entering the workplace to meet workers and to check workplace conditions. The complainants consider that this is a clear indication of the employer's anti-union and non-bona fide attitude and underline that the company did not comply with the following international instruments: the Declaration of Philadelphia, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the Termination of

Employment Recommendation, 1963 (No. 119), Conventions Nos 87 and 98, and the Declaration on Social Justice for a Fair Globalization.

643. Furthermore, the complainants denounce the inaction of the Government which failed to provide effective remedy. They refer, in particular, to section 158 of the LRA, according to which, "the employer who violates section 121 or section 123 of the LRA, shall be liable to imprisonment for a term not exceeding six months or to a fine of not exceeding ten thousand Baht, or to both". The complainants point out that the violation of these sections was established by both the LRC and the CLC and non-compliance with the LRC and CLC orders should have immediately triggered criminal proceedings by the authorities. The authorities denied to file charges or to investigate the matter.

644. By its communications dated 13 January and 11 July 2017, the TCTU informs that on 10 May 2016, it filed a complaint with the Japanese National Contact Point (NCP) pursuant to the OECD Guidelines for Multinational Enterprises. On 28 September 2016, the Japanese NCP informed the TCTU that "the company is unable to agree to engage in dialogue through the mediation of the Japanese NCP". The TCTU further indicates that in its "Final Statement on a Specific Instance Involving [the parent corporation and the company] in Relation to the OECD Guidelines for Multinational Enterprises" rendered on 23 June 2017, the Japanese NCP concluded:

> 5(2)(B). Despite the proposal for mediation by the Japanese NCP, the companies involved intend to respect the judicial procedures in Thailand and aim for resolution in accordance with the judicial procedures.
>
> …
>
> 6. The Japanese NCP recommends that [the parent corporation and the company] conduct activity while respecting the OECD Guidelines for Multinational Enterprises.

The TCTU thus concludes that the company also failed to comply with the abovementioned OECD principles.

B. The Government's reply

645. In its communications dated 24 February 2017, the Government outlines the facts of this case as follows. On 17 December 2013, a group of the company's employees had submitted demands and negotiated with the employer in compliance with the procedures prescribed by the LRA. As no agreement was reached, on 21 December 2013 the employees notified a conciliation officer of the Rayong Provincial Office of Labour Protection and Welfare. On 25 December 2013, an agreement on conditions of employment was reached by both parties. On 26 December 2013, the SMTWU was registered. On the same day, ten labour leaders were dismissed. On 14 January 2014, the SMTWU filed a complaint of unfair practice (wrongful termination) to the LRC. On 9 April 2014, the LRC issued an order to the employer to reinstate nine labour leaders in their former positions on the previous conditions, without loss of pay and compensation and bonuses taking into account the terms of the agreement dated 25 December 2013. Regarding the tenth labour leader, the LRC determined that his termination was not an unfair practice as he was not involved in the submission of demands. On 14 March 2015, he committed suicide. The employer has not complied with the order of the LRC and appealed it to the CLC. On 25 May 2015, the CLC upheld the order of the LRC. On 7 July 2015, the employer appealed the CLC decision to the Supreme Court. At present, the appeal is still pending. The nine labour leaders have not been reinstated.

646. The Government notes that the complainants allege that the Government has failed to: (1) provide effective remedy after the SMTWU President was demoted; (2) provide effective remedy when the company prohibited him to enter the workplace, which resulted in the loss of overtime pay, paid leave and other working benefits, and to enter the workplace to meet

fellow workers and to inspect workplace conditions; (3) provide effective remedy after the company dismissed nine labour leaders unfairly; and (4) compensate the heirs of one of the signatories of the workers' demands whose request for reinstatement was rejected by the LRC, which ultimately led to his suicide.

647. In reply, the Government indicates, as concerns the above point (1), that the SMTWU President did not submit or assign his representative to submit a complaint on unfair practice regarding his demotion. Only when such a complaint is submitted, can the competent official determine whether or not the SMTWU President was demoted unfairly, in violation of section 20, 52 or 121 of LRA. If there is an unfair demotion, the competent officer can take an action as prescribed by the LRA.

648. Regarding point (2), the Government indicates that the SMTWU President did not submit or assign his representative to submit a complaint regarding the alleged loss of benefits. When a complaint is submitted, the competent officer can take an action under the LRA against an unfair practice. Furthermore, as concerns the prohibition to visit the workplace, the Government considers that although the SMTWU President's employment is terminated and the case is still under the consideration of the Supreme Court, he is free to contact and consult with the fellow employees outside the premises of the company.

649. Regarding point (3), the Government reiterates that the LRC's order provided for the payment of legitimate benefits to the employees concerned and that, while the CLC upheld the LRC's decision, the employer appealed it to the Supreme Court where the case is still pending.

650. Regarding the last point (4), the Government indicates that the LRC, a tripartite body, after a careful consideration, had found that nine of the ten employees were involved in submitting the demands and were unlawfully terminated under section 121 of the LRA. Subsequently, the LRC issued an order of reinstatement of these nine employees under section 123 of the LRA. The LRC did not issue an order of reinstatement for the tenth employee because he had not taken part in submitting the demands. Submission of demands was not a cause of his termination. It was found that 20 employees were employed on 24 September 2013, three of these employees resigned for personal reasons, 16 employees passed the performance evaluation after probationary period on 21 January 2014, and one, the person in question, failed the performance evaluation and his employment was terminated. Thus, according to the Government, his termination was not an unfair practice under section 121 of the LRA and was not protected by section 123 of the LRA.

651. The Government points out that it is the right of both employee and employer who disagree with the CLC verdict to appeal to the Supreme Court, which determines the case based on facts and relevant legislation. If the Supreme Court upholds the verdict of the CLC, the employees concerned must be reinstated with compensation, and without loss of wages and benefits. If the employer fails to comply with the verdict of the Supreme Court, criminal proceedings must be taken against him/her.

652. By its communication dated 27 March 2017, the Government forwards the company's comments and observations on the allegations made in this case. The company first queries whether the TCTU could submit a complaint to the Committee on Freedom of Association on behalf of the SMTWU. The company further disagrees with the facts as related by the complainants and submits its own following outline.

653. On 16 December 2013, at about 8 p.m. a night-shift employee who was absent from work commenced a protest with seven employees as core leaders. The demonstrators subsequently submitted informal demands to the employer and continued to protest with two more employees as leaders until 1 p.m. of 17 December 2013. The negotiations took place between the company and the representatives of employees who submitted demands. The

negotiations did not involve the union, as the SMTWU had not yet been established at that time. A settlement agreement was signed on 25 December 2013.

654. On 26 December 2013, the core leaders were dismissed. While the union was established on the same day, the company was not aware of its existence until 6 January 2014 when it received the union's first official letter. The company argues that the nine employees were dismissed for acting as core leaders in inciting employees to stop working and join the protest during the night of 16 December 2013. Such action is considered to be a strike by the employees who have not properly and officially submitted demands and notified the employer and a labour inspector prior to the strike. Such practice is contrary to the process prescribed by the LRA and caused damage to the company as it had suspended the whole manufacturing process between 8 p.m. on 16 December 2013 and 1 p.m. on 17 December 2013.

655. Furthermore, the termination of the tenth worker on 17 February 2014 was not due to the submission of demands which he was not involved in, but to his failure to pass his probation period (he did not pass the performance evaluation with a score of 53 points while the rating for passing is 60 points). To the company's knowledge, he committed suicide due to his personal issues and that this was not related to the refusal of the LRC to issue protection order in his favour.

656. The company further points out that the case was submitted to the LRC by the employees themselves, and not the union, on 17 January 2014. At present, the company does not accept the nine former employees back to work because the labour dispute involving these employees is not yet final. Following the LRC and the CLC decisions, the company exercised its right of appeal to the Supreme Court. It has deposited judgment amount and money to be paid in the future with the court as security and evidence that the company is capable of making payment when the dispute ends. The company further points out that it has submitted a request for stay or postponement of execution of the LRC's order on the same day it filed its appeal with the Supreme Court. Therefore, the employer decided not to accept to reinstate the nine former employees because the decisions of the LRC and the CLC are not yet final and the case is still pending before the Supreme Court. The company further claims that the reinstatement of workers while the judgment is not final would affect peace, order and harmony of organization as well as be an obstacle for the employer to use its executive power as prescribed by the law.

657. As regards the alleged demotion of the SMTWU President, the company indicates that this was not a demotion; rather, his duties were changed to adjust them to the new management structure of the company. Such adjustments involved many employees. Every employee concerned is still entitled to the same rights and benefits received prior to the adjustment. The company points out that according to the law, it is entitled to undertake such action without obtaining prior consent from the employees. Concerning the prohibition to access its premises, the company indicates that this is due to the fact that the employer is currently submitting a request to the court for permission to terminate his employment. The company claims that he lacks efficiency and intentionally causes work delay, thus causing damages to the company. Allowing him to continue working will only cause further damages to the employer. However, the company continues to pay him normal wages and benefits, despite the fact that he is not required to work; thus, he does not suffer any damages in terms of working benefits. Under the LRA, the company's actions are not considered to be an unfair practice. Moreover, he is free to contact and consult with his fellow employees outside the company's premises. With regard to the alleged loss of remuneration from working overtime and bonuses, the company points out that it is the sole discretion of the employer whether to request his or her employee to work overtime.

658. Finally, the company points out that it is a juristic person incorporated under the Thai laws and that it is the duty of the Thai Government, as a member State, to legislate and prescribe

domestic guidelines which are in line with the international labour standards, while the duty of the company is to adhere to and comply with the promulgated laws of the country.

659. In its communication dated 27 September 2017 the Government indicates that the case is still pending before the Supreme Court.

C. The Committee's conclusions

660. *The Committee notes that this case, brought by the SMTWU and the TCTU, concerns the dismissal of ten workers from the company, as well as the alleged demotion of the SMTWU President and prohibition imposed on him to access the company's premises. The facts of the case on which the complainants, the Government, as well as the company, appear to agree can be summarized as follows.*

661. *On 17 December 2013, a group of the company's employees had submitted the demands and negotiated with the employer in compliance with the procedures prescribed by the LRA, while requesting registration of their union on 18 December 2013. As no agreement was reached, on 21 December 2013, the employees notified a conciliation officer of the labour dispute, in accordance with the legislation in force. On 25 December 2013, an agreement was reached by both parties. On 26 December 2013, the SMTWU was registered. On the same day, ten workers were dismissed. In January 2014, the SMTWU filed a complaint of unfair practice (wrongful termination) to the LRC. On 9 April 2014, the LRC issued an order of reinstatement of nine labour leaders in their former positions without loss of pay and benefits. Regarding the tenth labour leader, the LRC determined that his termination was not an unfair practice as he was not involved in the submission of the demands. On 14 March 2015, he committed suicide. The employer has not complied with the LRC order, but appealed it to the CLC. On 25 May 2015, the CLC upheld the LRC order. On 7 July 2015, the employer appealed the CLC decision to the Supreme Court. At present, the appeal is still pending. The nine labour leaders have not been reinstated.*

662. *The Committee notes a copy of the LRC Order. It notes, in particular, that having heard the witnesses and conducted its investigation, the LRC concluded to the violation by the company of section 121(1) of the LRA, concerning unfair practices, and ordered the reinstatement of nine labour leaders. The Committee notes that according to section 121(1):*

> *No employer shall:*
>
> *(1) terminate the employment or act in any manner which may make it for an employee, a representative of the employee, a director of labour union or a director of labour federation unbearable to continue working, due to the fact that the employee or labour union calls for a rally, files a complaint, submits a demand, participates in a negotiation or institutes a law suit or acts as a witness or submits evidence to the competent official under the law on labour protection or to the Registrar, conciliation officer, labour dispute arbitrator or Labor Relations Committee under this Act or to the Labour Court, or due to the fact that the employee or the labour union prepares to do so.*

663. *The Committee notes with regret that the case of nine workers dismissed in December 2013 is still pending on appeal and that in the meantime, these workers have not been reinstated. It recalls in this respect that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned. 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, paras 826 and 827]. The Committee further considers that in view of the time that has elapsed and given that both the LRC and the CLC have called for the reinstatement of workers dismissed on anti-union grounds, consideration should be given to their reinstatement or compensation pending appeal so that they may continue efficiently to represent their interests without being unjustly deprived of any income throughout this lengthy process. The Committee therefore requests the Government to review the situation of workers whose reinstatement was ordered by the LRC and the CLC to see how they may be efficiently supported pending the final decision of the Supreme Court and to keep it informed of all measures taken in this respect. It further requests the Government to provide a copy of the Supreme Court decision once it has been handed down.*

664. *The Committee further notes that having considered the facts and the information presented to it, the LRC concluded that there was no unfair labour practice with regard to the tenth worker who subsequently committed suicide in March 2015. While noting this information with sympathy and compassion, as no evidence was presented to it beyond the information already examined by the LRC, the Committee will not pursue the examination of this allegation.*

665. *The Committee further notes that the complainants allege that the SMTWU President, was demoted on 5 January 2016, and thus, no longer benefits from the overtime pay, etc. and that on 17 March 2016, he was ordered to stop working and not to enter the premises of the company; however, the fact that he is still receiving wages precludes him from suing the employer, as the current situation is in conformity with the law. For its part, the Government indicates that no formal complaint of unfair labour practice was lodged by him. As concerns the prohibition to visit the workplace, the Government considers that although the SMTWU President's employment was terminated and the case is still under the consideration of the Supreme Court, he is free to contact and consult with the employees outside the premises of the company. The Committee further notes that the company's assertion that the changes in his duties were the result of the new management structure, which affected many employees and that all employees, including the union President, are entitled to the same rights and benefits they received prior to the adjustment. The company points out that according to the law, it is allowed to undertake such actions without obtaining prior consent from the employees. It further points out that it has sole discretion to request or not his or her employee to work overtime. Concerning the prohibition to access its premises, the company indicates that this is due to the fact that the employer is currently submitting a request to the court for permission to terminate the SMTWU President employment. While the company continues to pay him normal wages and benefits, despite the fact that he is not required to work, the company claims that he lacks efficiency and intentionally causes work delay, thus causing damages to the company. The company further confirms the Government's statement that he remains free to contact and consult with his fellow employees outside the company's premises.*

666. *The Committee understands that the termination case of the SMTWU President, brought by the employer, is still pending while he continues to receive wages and benefits, with the exception of overtime income. With reference to the principles above, the Committee expects that the court will pronounce on his dismissal without delay and that the union and its President can exercise fully their freedom of association rights and trade union activities. It requests the Government to keep it informed in this regard and to provide a copy of the judgment once it has been handed down.*

The Committee's recommendations

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

(a) The Committee therefore requests the Government to review the situation of workers whose reinstatement was ordered by the LCL and the CLC to see how they may be efficiently supported pending the final decision of the Supreme Court and to keep it informed of all measures taken in this respect. It further requests the Government to provide a copy of the Supreme Court decision once it had been handed down.

(b) The Committee expects that the court will pronounce on the dismissal of the SMTWU President without delay and that the union and its President can exercise fully their freedom of association rights and trade union activities. It requests the Government to provide a copy of the judgment once it has been handed down.

(c) The Committee requests the Government to keep it informed of all measures taken in this respect of the recommendations above.

CASE NO. 3095

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

Complaint against the Government of Tunisia presented by the Tunisian Labour Organization (OTT)

Allegations: The complainant organization denounces anti-union acts which the authorities have committed against it, thereby preventing trade union pluralism in the country

668. The Committee examined this case at its June 2016 meeting and presented an interim report for the Governing Body [see 378th Report, paras 775–808, approved by the Governing Body at its 327th Session].

669. The Government provided partial observations in a communication dated 11 April 2017.

670. Tunisia 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

671. At its June 2016 meeting, the Committee made the following recommendations [see 378th Report, para. 808]:

(a) The Committee welcomes the government circular authorizing the deduction of trade union dues for the OTT for 2016 under the check-off system in the public sector and invites the Government to hold consultations with all the trade union organizations concerned with a view to permanently establishing a system which ensures that all trade union organizations in the public sector can benefit from the deduction of their members' union dues under the check-off system.

(b) The Committee requests the Government to ensure, with a view to equal treatment for all trade unions, that all Cabinet circulars concerning the deduction of trade union dues of public employees give equal treatment to all persons in matters relating to the cancellation of union membership. The Committee urges the Government to provide detailed observations on this matter.

(c) Noting the Government's statement that it has asked the administrative departments and enterprises concerned to provide information on the irregularities described, the Committee expects the Government to send information as soon as possible on the various measures that have affected the OTT members and officers concerned (Yassin Ben Ismaïl, Najwa Khila Ben Thabet, Kamal Kamoun, Samir El-Zawari, Imad Belkassem, Saber Eliyadi, Mohamed Ali Thulaithi and Madji El-Abdali). The Committee urges the Government to take the necessary steps to expedite investigations relating to the cases of permanent dismissal of trade unionists and, should these dismissals prove to have been on anti-union grounds, to ensure that the trade unionists are reinstated with the payment of all outstanding wages. If reinstatement is not possible for objective and compelling reasons, adequate compensation must be awarded as reparation for all injury suffered and to prevent any recurrence of such acts in the future.

(d) The Committee notes with concern allegations concerning the impossibility for OTT local and regional bodies to function properly and requests the Government to expedite investigations of the administrative departments concerned on the basis of the allegations and, if necessary, to take urgent corrective measures and send its observations in this respect.

(e) The Committee requests the Government to provide detailed observations in response to the allegation that the OTT is excluded from all negotiations between the workers and the administration, such as those that culminated in the signing of the collective agreement concerning employment mechanism No. 16. The Committee recalls the importance of consulting all trade union organizations concerned on matters affecting their interests or those of their members.

(f) The Committee requests the Government to ensure that comments or acts by the authorities do not result in obstruction of the exercise of trade union rights by the OTT or its members.

(g) The Committee requests the Government to keep it informed of the outcome of the investigation into several attempts to murder OTT general secretary Mr Lasaad Abid.

(h) The Committee once again reiterates its long-standing recommendation to the Government to take all necessary steps to lay down clear and pre-established criteria for determining trade union representativeness, in consultation with the social partners, and to keep it informed of any progress made on this matter. The Committee expects all the organizations concerned to be consulted in this respect and reminds the Government once again that it may avail itself of ILO technical assistance, if it so wishes.

B. The Government's reply

672. In its communication dated 11 April 2017, the Government provides information in response to some of the Committee's recommendations.

673. With regard to the collection of public employees' union dues for the complainant organization, the Government indicates that, under Cabinet circular No. 3 of 9 January 2017 concerning the collection of public employees' union dues for certain trade union organizations for 2017, public employees who are members of the Tunisian Labour Organization (OTT) benefit from the check-off system for trade union dues, as in other trade union organizations. The Government indicates that the collection of dues is conducted on an equal basis for all public employees, in accordance with a circular issued by the Cabinet. Lastly, the Government indicates that the monthly trade union due is collected at the written and signed request of the employee concerned.

674. As to the alleged infringements of the trade union rights of OTT officers at the Société des transports de Tunis (Tunisian Transport Company) (TRANSTU), the Government provides the following information: Mr Mohamed Ali Thulaithi, general secretary of the primary trade union council for TRANSTU employees in Beb Saadoun, appeared before the disciplinary board for having attempted to conceal a stolen object and having contributed to its return, without informing his direct supervisors. After appearing before the disciplinary board, Mr Mohamed Ali Thulaithi was acquitted of all charges, and the case was closed. This proceeding has not had any impact on his professional career. Mr Madji El-Abdali, general secretary of the primary trade union council for light-rail employees, appeared before the disciplinary board for having caused chaos and division between employees, having accused the administration of impartiality and having caused damage to his supervisors' reputation. The disciplinary board decided to sanction him with an office transfer without change of residence, and he was subsequently transferred from the railway network to the bus network within the company. This constitutes a second-degree sanction under the provisions of article 34 of the general regulations for TRANSTU employees, resulting in ineligibility for promotion during the year in question or the previous year. Mr El Abdali was consequently not promoted to grade 312, but will appear on the list of employees who are eligible for promotion in January 2018 and will no longer be blocked for promotion thereafter. The Government indicates that the company informed the General Directorate for Labour Inspection and Conciliation of the sanctions against the trade union officer and that the labour inspectorate replied by stating that it only addresses cases in which employees have been dismissed, in accordance with article 166 (new) of the Labour Code.

675. With regard to the allegations of several attempts to murder OTT general secretary Mr Lasaad Abid, the Government indicates that it will provide the Committee with information on the measures taken at a later date, as it is awaiting information from the bodies concerned.

676. Lastly, the Government states that it is working with the social partners to design a system of trade union representativeness that is based on a consensus among the social partners and takes into account both the economic and social reality and the industrial relations system in place in Tunisia. It is receiving technical assistance from the ILO in this regard. The Government reports that, as part of a project for social dialogue and strengthening good labour governance in Tunisia, a tripartite workshop on criteria for determining trade union representativeness was held on 22 and 23 February 2017, in which officials from the Ministry of Social Affairs and representatives of the Tunisian General Labour Union (UGTT) and of the Tunisian Union of Industry, Trade and Handicrafts (UTICA) took part.

677. The Government adds that a tripartite committee, comprised of government, UGTT and UTICA representatives, has been set up and adopted the following working method: (i) identify the system of trade union representativeness to be adopted: absolute representativeness or relative representativeness, at various levels (national, regional, sectoral and institutional); (ii) establish objective and specific criteria to assess the degree of trade union organizations' representativeness; (iii) specify the competences of trade union organizations according to the degree of their representativeness; (iv) specify the means by which trade union organizations may benefit from facilitation measures according to the degree of their representativeness; and (v) define the competent body for assessing the degree of trade union organizations' representativeness; (vi) define the competent body for examining appeals relating to the findings of trade union representativeness assessments.

678. It has been agreed to continue examining the issue of trade union organizations' competences by drawing up an inventory of the various trade union competences and examining the method by which they should be granted to trade union organizations, in accordance with the degree of their representativeness and according to the four levels mentioned above, in conformity with the legislation in force and international labour standards. The work of the

tripartite committee will continue with a view to drafting a bill to regulate the issue of trade union representativeness that would supplement the Labour Code.

C. The Committee's conclusions

679. *The Committee recalls that the case under examination refers to allegations of serious anti-union acts committed against the complainant organization by the authorities and a rival trade union federation ever since it was founded and also the Government's alleged refusal to include the complainant in the process of collective bargaining in the public service. The Committee notes the information provided by the Government in response to some of its previous recommendations.*

680. *With regard to the deduction of trade union dues for the OTT under the check-off system in the public sector, the Committee notes the Government's indication that, under Cabinet circular No. 3 of 9 January 2017 concerning the collection of public employees' union dues for certain trade union organizations for 2017, public employees who are members of the OTT benefit from the check-off system for trade union dues, as in other trade union organizations. The Committee understands that the current system of deduction is based on the adoption of an annual government circular and invites the Government to hold consultations with all the trade union organizations concerned on the possibility of establishing a more permanent system which ensures that all trade union organizations in the public sector can benefit from the deduction of their members' union dues under the check-off system. Moreover, the Committee also requests the Government to ensure that the system for the collection of public employees' union dues gives equal treatment to all trade union organizations in matters relating to the cancellation of union membership.*

681. *The previous recommendations of the Committee also referred to various measures that have affected OTT members and officers (Yassin Ben Ismaïl, Najwa Khila Ben Thabet, Kamal Kamoun, Samir El-Zawari, Imad Belkassem, Saber Eliyadi, Mohamed Ali Thulaithi and Madji El-Abdali) in the administrative departments and enterprises indicated. The Government stated that it had asked the administrative departments and enterprises concerned to provide information on the irregularities described. The Committee notes that, in its latest report, the Government only refers to the situation of two trade union officers in a transport company. It refers to the case of Mr Mohamed Ali Thulaithi, general secretary of the primary trade union council for employees in Beb Saadoun, who appeared before the company disciplinary board for having attempted to conceal a stolen object and having contributed to its return, and who was found innocent. It also refers to the case of Mr Madji El-Abdali, general secretary of the primary trade union council for light-rail employees, who appeared before the company disciplinary board for having caused chaos and division between employees, accused the administration of impartiality and caused damage to his supervisors' reputation. Mr El-Abdali was sanctioned with an office transfer without change of residence, which constitutes a second-degree sanction under the provisions of article 34 of the general regulations for the company's employees, resulting in his ineligibility for any promotion until January 2018, the date from which he will once again be eligible for promotion.*

682. *The Committee notes that the Government has not yet provided information on the OTT members and officers who, according to the complainant organization, were subjected to discriminatory penalties, ranging from suspension of the worker for a specified period to permanent dismissal, in the sectors of banking (Yassin Ben Ismaïl, Najwa Khila Ben Thabet and Kamal Kamoun), education (Samir El-Zawari and Imad Belkassem) and agriculture (Saber Eliyadi). Recalling that the Government previously stated that it had asked the administrative departments and enterprises concerned to provide information on the alleged irregularities, the Committee expects the Government to provide information as soon as possible on the situation of the abovementioned trade unionists.*

683. *More generally, with regard to alleged anti-union violence towards OTT members and the impossibility for OTT local and regional bodies to function properly, the Committee notes with regret the lack of information from the Government on the corrective measures possibly taken in this regard in the administrative departments concerned and urges the Government to provide an environment in which OTT local and regional bodies can conduct their legitimate union activities without obstruction.*

684. *With respect to the particularly serious allegations of several attempts to murder OTT general secretary Mr Lasaad Abid, the Committee notes with regret that the Government has not provided any information on the measures taken or on the findings of the judicial inquiry which, according to the complainant organization, would have been conducted. The Committee therefore reiterates its recommendation and expects the Government to provide without delay the findings of the inquiry on the attempts to murder Mr Lasaad Abid.*

685. *Lastly, the Committee reiterated its long-standing recommendation to the Government to take all necessary steps to lay down clear and pre-established criteria for determining trade union representativeness and to ensure that all the organizations concerned are consulted in this respect. The Committee recalled that this is the only way that privileges granted to certain organizations vis-à-vis others – based on clearly established representativeness – might be understood and accepted. In this regard, the Government states that it is working with the social partners to design a system of trade union representativeness that is based on a consensus among the social partners and takes into account both the economic and social reality and the industrial relations system in place in Tunisia. The Government adds that a tripartite committee, comprised of government, UGTT and UTICA representatives, has been set up and adopted the following working method: (i) identify the system of trade union representativeness to be adopted: absolute representativeness or relative representativeness, at various levels (national, regional, sectoral and institutional); (ii) establish objective and specific criteria to assess the degree of trade union organizations' representativeness; (iii) specify the competences of trade union organizations according to the degree of their representativeness; (iv) specify the means by which trade union organizations may benefit from facilitation measures according to the degree of their representativeness; (v) define the competent body for assessing the degree of trade union organizations' representativeness; and (vi) define the competent body for examining appeals relating to the findings of trade union representativeness assessments. The work of the tripartite committee should continue with a view to drafting a bill to regulate the issue of trade union representativeness that would supplement the Labour Code. Lastly, the Government adds that it is receiving technical assistance from the ILO through a project for social dialogue and strengthening good labour governance in Tunisia. The Committee welcomes this information, which shows the Government's commitment to progressing on the issue. It nevertheless expects the Government to take all necessary steps to conclude as soon as possible the tripartite consultations being held to lay down clear and pre-established criteria for determining trade union representativeness. The Committee also insists on the need to hold such consultations in an inclusive manner in a framework that includes all the organizations affected by this issue. The Committee urges the Government to keep it informed of any developments in this regard.*

The Committee's recommendations

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

(a) With regard to the check-off system for trade union dues in the public sector, the Committee understands that the current system is based on the adoption of an annual Government circular and invites the Government to hold consultations with all the trade union organizations concerned on the

possibility of establishing a more permanent system which ensures that all trade union organizations in the public sector can benefit from the deduction of their members' union dues under the check-off system. Moreover, the Committee expects the Government to ensure that the system gives equal treatment to all trade union organizations in matters relating to the cancellation of union membership.

(b) Noting that the Government has not provided the requested information concerning OTT members and officers who, according to the complainant organization, were subjected to discriminatory penalties in the sectors of banking (Yassin Ben Ismail, Najwa Khila Ben Thabet and Kamal Kamoun), education (Samir El-Zawari and Imad Belkassem) and agriculture (Saber Eliyadi), the Committee expects the Government to provide information as soon as possible on the situation of the abovementioned trade unionists.

(c) The Committee generally urges the Government to provide an environment in which OTT local and regional bodies can conduct their legitimate union activities without obstruction.

(d) With respect to the particularly serious allegations of several attempts to murder OTT general secretary Mr Lasaad Abid, the Committee notes with regret that the Government has not provided any information on the measures taken in this regard or on the findings of the inquiry which, according to the complainant organization, would have been conducted. The Committee expects the Government to provide without delay the findings of the inquiry.

(e) The Committee expects the Government to take all necessary steps to conclude as soon as possible the tripartite consultations being held to lay down clear and pre-established criteria for determining trade union representativeness. The Committee insists on the need to hold such consultations in an inclusive manner in a framework that includes all the organizations affected by this issue. The Committee urges the Government to keep it informed of any developments in this regard.

CASE NO. 2254

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
– the International Organisation of Employers (IOE) and
– the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS)

Allegations: Marginalization of employers' associations and their exclusion from decision-making, thereby precluding social dialogue, tripartism and consultation in general (particularly in respect of highly important legislation directly affecting employers) and failing to comply with recommendations of the Committee on Freedom of Association; acts of violence, discrimination and intimidation against employers' leaders and their organizations; detention of leaders; legislation that conflicts with civil liberties and with the rights of employers' organizations and their members; a violent assault on FEDECAMARAS headquarters, resulting in damage to property and threats against employers; and a bomb attack on FEDECAMARAS headquarters

687. The Committee last examined this case at its May–June 2017 session, when it submitted an interim report to the Governing Body [see 382nd Report, approved by the Governing Body at its 330th Session (June 2017), paras 602–627].

688. The complainant organizations presented new allegations in a communication dated 8 May 2017.

689. The Government sent its observations in a communication received on 2 October 2017.

690. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

691. At its June 2017 meeting, the Committee made the following interim recommendations regarding the allegations presented by the complainant organizations [see 382nd Report, para. 627]:

(a) While once again expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, the Committee insists on the urgency of the Government taking strong

measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela. The Committee strongly urges the Government to take all necessary measures to ensure that FEDECAMARAS is able to exercise its rights as an employers' organization in a climate that is free from violence, pressure or threats of any kind against its leaders and members and to promote, together with that organization, social dialogue based on respect.

(b) As regards the abduction and mistreatment in 2010 of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds), the Committee urges the Government to send a copy of the ruling by which one of the accused was sentenced and to state whether other people were charged (providing information on any related proceedings and the outcome thereof) and whether FEDECAMARAS and the leaders concerned received compensation for the damage caused by these illegal acts. As regards the February 2008 bomb attack on FEDECAMARAS headquarters, the Committee again insists that the Government send its observations on the points raised by FEDECAMARAS and, in particular, on the outcome of the appeal against the closing of the case and on any investigation carried out in order to determine whether anyone else was involved in the attack, and thus to shed light on its motive and to prevent any recurrence.

(c) As regards the structured bodies for bipartite and tripartite social dialogue that need to be established in the country, the plan of action to be established in consultation with the social partners with stages and specific time frames for implementation with the technical assistance of the ILO, as recommended by the Governing Body, and the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee deeply deplores the lack of information and further progress in this regard. It recalls that the conclusions of the mission refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee also recalls that at its March 2017 session, in examining the complaint presented under article 26 of the ILO Constitution against the Bolivarian Republic of Venezuela alleging non-compliance with Conventions Nos 26, 87 and 144, the Governing Body urged the Government to institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues, including matters relating to the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders. The Committee insists on the urgency of the Government adopting immediately tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission and the Governing Body. Deeply deploring that the Government has not yet provided the requested plan of action, the Committee once again urges it to implement fully without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon.

(d) The Committee, in line with the conclusions of the high-level tripartite mission, again urges the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee urges the Government to inform it of any measures taken in this regard.

(e) The Committee, having noted the Government's observations concerning the allegations of detention and trial of employers and leaders in various sectors, deeply deplores that once again a full answer has not been provided in relation to the individuals who are the subject of investigation procedures. As regards the cases of the meat processing company and the supermarket chain, the Committee urges the Government not merely to give an indication of general criminal offences but to indicate the specific allegations against each of the people under investigation or trial by the judicial authorities and to provide precise information on the progress of the respective judicial proceedings. Furthermore, in the case of the meat processing company, the Committee urges the Government to state whether these employers and leaders have been subjected to precautionary or detention measures and again requests the authorities to consider lifting any preventive detention measures imposed on them.

(f) As regards the adoption by the President of the Republic of numerous decree-laws on important economic and production-related issues without consulting FEDECAMARAS, deeply deploring that the Government has not made any observations concerning their impact on social dialogue and the persistent nature of this situation, the Committee firmly urges that full consultations on draft legislation covering labour, economic or social matters that affect their interests and those of their members be held without delay with the most representative organizations of workers and employers, including FEDECAMARAS.

(g) The Committee expresses its deep concern at the lack of information and progress on the above issues and urges the Government to take all the requested measures without delay.

(h) The Committee will examine the new allegations, made by the IOE and FEDECAMARAS and the reply of the Government thereto at its next meeting and requests the Government to send further relevant observations in this respect.

(i) The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

B. The complainants' allegations

692. In their communication of 8 May 2017, the IOE and FEDECAMARAS denounce new violations of the principles of freedom of association and the absence of effective social dialogue. The complainants denounce that spokespersons for or linked to the Government have continued to attack FEDECAMARAS, its leaders and the business sector. They provided numerous examples of unsubstantiated and intimidating accusations and threats made through the media by, among others, the Deputy Chairperson of the government party – a member of parliament who was appointed to the Government as co-leader of the National Anti-Coup Committee for Peace and Sovereignty – and the President of the Republic himself. The complainants also denounce attacks on the employers' sector by government authorities, including threats of imprisonment, assaults, arrests of leaders, employees and shareholders, accusing them of corruption or economic destabilization and subjecting them to public ridicule without guaranteeing due process and their right of defence: they refer, in particular, to the imposition of orders to reduce prices (with detention of employees) and confiscation of goods (combined with threats to initiate criminal proceedings against the President of FEDECAMARAS, alleging that the latter described one of the cases of confiscation as theft, which is untrue); looting in the stores of the State of Bolívar, and the detention and referral for trial before the military courts of representatives of the leading credit card transaction company, in relation to faults in the operation of the system (accusing them of treason); and arbitrary measures against bakeries with the support of the security forces (without respecting the right of defence and resulting in the occupation of some bakeries).

693. The complainant organizations also denounce the absence of effective dialogue and reiterate that the dialogue processes which the Government had announced before the Governing Body of the ILO have not been put in place (neither the action plan that provided for social dialogue nor the inclusion of FEDECAMARAS in a socio-economic dialogue round table have taken place). The complainants denounce that FEDECAMARAS has been excluded through new governmental measures having an impact on business performance and undermining freedom of association. In this regard, the complainants referred to the approval, without consultation, of the purchase from farmers of 50 per cent of agro-industrial production for use by local supply and production committees. The complainants also denounce the creation, without consultation, of the Workers' Production Boards (WPBs), with three employees' representatives from the enterprise and four from the State, which constitutes an additional mechanism for state interference (as these are subject to the guidelines of the Government, with the presence and support of the armed forces). The complainants further pointed out that among the representatives of the State, one belongs to the Bolivarian Armed Forces, one to the Bolivarian militias, one is a youth representative

and one belongs to the National Women's Union. The complainants denounce the presentation of the WPBs by the People's Ministry of Labour and Social Security (MPPPST), according to which the WPBs have been conceived as a civil–military union for the professional, technical and political training of workers and they must have the support of all trade union organizations. The complainants refer to Decree No. 17 of 8 November 2016 on the creation of the WPBs, issued under the state of emergency for economic hardship. The complainants further denounce the creation of the General Staff of the Working Class (a government organization to strengthen the WPBs) and the Labour Feminist Brigades (a body to promote control of the entire social process of work in each company), as well as other strategies for using the country's labour movement in support of the Government and against employers, in violation of freedom of association. In addition to these bodies, the complainants referred to the complex structure of highly politicized state organizations with which companies must interact (including various supervisory bodies such as the National Superintendence for the Defence of Socio-economic Rights) thereby limiting the freedom of action of employers and workers, making it virtually impossible for enterprises to conduct normal business activities and rendering ineffective the exercise of freedom of association. The complainants also stressed that heavy state intervention and interference limit the operational capacity of employers and have led to a decrease in the number of enterprises and the consequent loss of decent jobs – largely because of the absence of social dialogue with the most representative actors in the country in relation to the adoption of macroeconomic measures and of policies that ensure the sustainability of enterprises and jobs. The complainants further denounce that another economic emergency decree was enacted on 13 September 2016 (and, once again, its wording is part of the Government's campaign to stigmatize the business and trade union sectors – attributing the poverty suffered by the Venezuelan population to an economic war allegedly waged by certain sectors of the national economy – including repressive measures against the employers), as well as the approval, without consultation, of increases in the minimum wage and the *cestaticket* (food voucher) in January and April 2017 and February 2017, respectively.

694. The complainants allege that notwithstanding the fact that written communications were exchanged and meetings held between FEDECAMARAS and the MPPPST (specifically, on 11 and 31 January and 27 April 2017), these meetings, which were held in a climate of institutional respect, were purely formal in nature, did not take place within structured dialogue mechanisms or in a climate of sufficient trust between the parties to support the realization of effective dialogue and were carried out simultaneously with the aforementioned intimidating attacks on FEDECAMARAS, its affiliated organizations and its leaders, adding that the invitations to attend these meetings were couched in intimidating terms by the Minister in the media. The complainants further state that: (i) although the MPPPST admitted at the meeting of 9 January 2017 that the consultation regarding the increase in the minimum wage in January 2017 had been omitted and that, by a letter of 14 February 2017, FEDECAMARAS had been requested to express its views on the policy of minimum wage increases (to which FEDECAMARAS responded on 23 February 2017), on 24 February, the increase impacting the food benefits was published without due tripartite consultation; and (ii) although at the meeting held on 27 April 2017 the Minister asked for suggestions regarding the following salary increase, FEDECAMARAS was unable to express specific considerations or participate in an effective dialogue thereon because the MPPPST did not transmit to it any specific terms or elements regarding the increase under consideration and, again, an increase in the minimum wage was adopted on 30 April 2017 without tripartite consultation. Despite this, FEDECAMARAS reiterates once again its general complaints that isolated wage increases do not solve the problem of the workers' loss of purchasing power and that comprehensive measures are required. Finally, the complainants point out, in relation to the National Council on the Productive Economy, that while it is possible that one of its chambers of commerce or employers might participate in

a meeting on a one-time basis, FEDECAMARAS as an institution is still not a member of the aforementioned Council.

C. The Government's reply

695. In a communication dated 23 May 2017, the Government had provided its observations replying to the allegations of the complainant organizations of 8 May 2017. Regarding the allegations of intimidating attacks on FEDECAMARAS, its affiliated organizations and its leaders, the Government referred to the information it provided to the Governing Body during its 329th Session (March 2017). Furthermore, in its observations, the Government affirmed that: (i) the various measures that allegedly constituted attacks on various business sectors were not arbitrary and were carried out in accordance with the law and with the goal of protecting the population (in relation to allegations of arrests and intimidation of leaders and shareholders of a consortium of credit card transaction companies, the Government indicates that upon proof that faults in the electronic payment platform had been deliberately caused as a form of financial sabotage, the competent authorities proceeded to arrest the perpetrators, and that it was in no way an act of intimidation against Venezuelan businessmen); (ii) the purchase of 50 per cent of agro-industrial production was carried out in accordance with the constitutional mandate to ensure the availability of commodities within the context of economic warfare and the creation of WPBs was carried out to promote the participation of the working class in the management of production, without replacing or opposing the trade union organization; and (iii) the increase in the *cestaticket* (food voucher) was the result of its natural annual adjustment and the MPPPST had asked FEDECAMARAS, in its communication dated 14 February 2017, to submit its proposals concerning the salary increase that was customary for Labour Day. The replies, received from FEDECAMARAS on 23 and 27 April 2017, did not contain any concrete proposals.

696. In its communication dated 29 September 2017, the Government sent its observations concerning the aforementioned recommendations of the Committee.

697. Concerning recommendation (a), the Government once again denies that FEDECAMARAS, its affiliates or its leaders have been persecuted, pressured, threatened or subjected to any act of violence as a result of their condition and exercise of trade union activity. The Government alleges that it has not refused to recognize FEDECAMARAS as one of the most representative employers' organizations. The Government argues that, however, while at the international level FEDECAMARAS wishes to legitimize its status as a representative organization of employers, at the national level it acts as a political organization in opposition to the legitimately elected Government. The Government submits that the acquiescence of FEDECAMARAS with regard to the destabilizing political activities that have been taking place in the country since April 2017 was clear and evident, in an attempt to disregard the institutional framework and forcefully put an end to the established constitutional order, ignoring the democratically elected authorities. It also alleges that FEDECAMARAS made public calls to suspend the election process of the National Constituent Assembly on 30 July 2017. Based on these arguments, the Government once again requests the Committee to stop examining these matters, which it considers to fall outside its scope, and that particular political interests should no longer be allowed to be used in the campaign of attacks against the Bolivarian Republic of Venezuela.

698. With regard to recommendation (b) of its previous examination of the case, the Government reiterates that since September 2015, by virtue of a final ruling, which is currently being enforced, the perpetrator of the acts that took place in 2010 against the representatives of FEDECAMARAS was sentenced to 14 years and eight months' imprisonment. The Government indicates that the facts in question were chance acts completely unrelated to the trade union status of the affected persons, and therefore requests the Committee to refrain from further examining this matter. As regards the granting of compensation to

FEDECAMARAS and the leaders concerned in the case, the Government indicates that it will act to the extent appropriate and where so determined by a final judicial ruling.

699. With regard to recommendations (c) and (d) of its previous consideration of the case, the Committee notes that the Government emphasizes its commitment to advancing consensus and dialogue in maintaining peace. The Government emphasizes that FEDECAMARAS has been invited by the highest Governmental bodies to join the honest and politically disinterested dialogue at a time when individual economic and political interests, both internal and external, attempt to ignore the institutional framework and the rule of law in the country. In this regard, the Government transmits its response to the communication of 2 August 2017 from FEDECAMARAS (reporting on the appointment of the new Management Committee of this organization), in which the MPPPST welcomed the suggestion of dialogue made by FEDECAMARAS in its letter. In this letter of reply, the Minister calls on FEDECAMARAS to deal without distractions with the contribution of the business sector in this process, as well as to renounce individual and political interests that have historically been used to justify actions contrary to the Constitution and the laws of the Republic (also inviting FEDECAMARAS to condemn any action, internal or external, that contributes to the destabilization of the country or attempts to infringe on national sovereignty). The Government indicates that the National Constituent Assembly having been formed, the invitation for FEDECAMARAS to participate remains open, free of demands and agendas. Nevertheless, the Government reports that, unfortunately, FEDECAMARAS refuses to recognize the full powers of the National Constituent Assembly and has disregarded the Government's efforts to engage in direct and honest bipartite dialogue.

700. The Government also recalls that, previously, at the 106th Session of the International Labour Conference in June 2017, the Minister of MPPPST requested the support of the Director-General to hold a tripartite meeting at ILO headquarters in the presence of his representatives, in addition to the representatives of FEDECAMARAS and the Bolivarian Socialist Confederation of Urban, Rural and Fisheries Workers (CBST), as the most representative employers' and workers' organizations in the country. The Government indicates that, unfortunately, FEDECAMARAS, ignoring, with a hint of arrogance, the CBST as the most representative workers' organization and claiming that it has political ties with the Government, coupled with the destabilizing situation that was emerging in the country at that time, decided not to attend the meeting a few minutes before its commencement. The Government emphasizes that this attitude is at odds with FEDECAMARAS' continual and constant requests to the ILO for technical assistance for the implementation of social dialogue with the Government.

701. With regard to recommendation (e) of its previous examination of the case, the Government provides, in relation to the case of the meat processing company, the following information on the criminal investigations initiated: (i) in March 2015, charges were filed against Ms Tania Carolina Salinas Rebolledo and Ms Delia Isabel Rivas Colina in relation to the commission of the crimes of speculation, boycotting, fraudulently misrepresenting the quality of goods, price rigging, selling expired foodstuffs and criminal conspiracy; these persons are currently waiting for the relevant preliminary hearing to be held while their bank accounts have been suspended and frozen as a result of a provisional injunction granted at the national level; (ii) Ms Delia Isabel Rivas Colina, as well as Ms Anllerlin Guadalupe López Graterol, Mr Yolman Javier Valderrama and Mr Ernesto Luis Arenad Pulgar are subject to precautionary measures alternative to imprisonment; and (iii) a preventive detention measure was imposed on Ms Tania Carolina Salinas Rebolledo (who is a fugitive from justice). Regarding the supermarket chain, the Government reports that: (i) in May 2015 charges were brought against Mr Manuel Andrés Morales Ordosgoitti and Mr Tadeo Arriechi Franco for the commission of the crimes of boycotting and destabilization of the economy; (ii) in November 2015, the competent court replaced the detention of accused persons with alternative precautionary measures; (iii) on 23 January

2017 the preliminary hearing was held and the court ordered the closing of the case (and consequently the cessation of the precautionary measures ordered); and (iv) the Public Prosecutors' Office filed an appeal against the decision ordering the closing of the case on 30 January 2017.

702. With regard to recommendation (f) of its previous consideration of the case, the Government indicates that, as the ILO is aware, the Government has conducted consultations and convened meetings on the issue of wages and other labour matters with the participation of workers' and employers' organizations (including FEDECAMARAS and its affiliated organizations) but FEDECAMARAS has refused to take part in those consultations and meetings and has ignored this dialogue, acting in a way that is not in accordance with the law, showing no respect or consideration for the other participating sectors. The Government refers in particular to FEDECAMARAS' refusal to take part in the dialogue to which it has been invited, within the framework of the work of the National Constituent Assembly, to contribute to the country's economic and social development (the Government refers to the decree of 31 August of the National Constituent Assembly calling for a national constituent dialogue of the productive sectors throughout the country). The Government states that the fact that there has been no progress on social dialogue in the country was due to the expression by FEDECAMARAS of political-partisan interests, which are unrelated to labour and business matters and not in accordance with the constitutional and legal order. In this regard, it points out that FEDECAMARAS has refused to engage in dialogue with the Government and the most representative workers' organizations (remembering that it did not participate in the ILO-sponsored meeting during the International Labour Conference in 2017). The Government expresses the hope that FEDECAMARAS recognize the institutional framework of the country and leaves the door open to engage in dialogue in conditions of public recognition, either within the framework of the National Constituent Assembly or any other governmental body.

703. Finally, the Government indicates that it reserves the opportunity to continue to report on the other conclusions and recommendations of the Committee, while at the same time stating that it does not agree with them and that it will expand its reply in due course.

D. The Committee's conclusions

704. *As regards recommendation (a) from its previous examination of the case (allegations of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, its leaders and affiliated companies), the Committee notes with deep regret that the Government is again using its reply to accuse the complainant organization to be linked to those who carried out destabilizing actions in the country and gives no indication that it has taken any measures to prevent acts and statements of stigmatization and intimidation, as the Committee recommended. The Committee notes once again with regret the persistence of attacks, threats and interference in the country's employer sector and against its leaders, impairing the capacity of the employers' organizations to defend the interests of their members. Under these circumstances, the Committee regrets that it must reiterate its previous recommendation and urges the Government to take the requested measures without delay. In this regard, the Committee is bound to reiterate that for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. This implies that, in so far as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers' organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 36]. The Committee again notes that, throughout its examination of this case, it has*

been witness to many serious accusations levelled against FEDECAMARAS by the Government and has noted with great concern the many allegations of attacks against this organization, emphasizing that, taken as a whole, these allegations create a climate of intimidation of employers' organizations and their leaders that is incompatible with the requirements of Convention No. 87. In this regard, the Committee regrets that it is bound to recall once again the principle whereby 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]. It firmly urges the Government to take all the necessary measures in this regard and with a view to the promotion of social dialogue based on respect. The Committee recalls that, according to the Declaration of Philadelphia, which is part of the ILO Constitution, the war against want requires to be carried on by an effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.*

705. *As regards recommendation (b) from its previous examination of the case (allegations of violence, specifically, the abduction and mistreatment of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz in 2010), the Committee regrets that the Government neither sends, despite repeated requests by it, a copy of the ruling issued (in its previous examination of the case, the Government indicated that it had sent a request to the Public Prosecutor's Office to obtain a copy thereof) nor provides more detailed information on the granting of compensation. The Committee urges the Government to send it a copy of the ruling issued and to state whether other people were charged (providing information on any related proceedings and the outcome thereof). The Committee also requests the Government to inform it of the status and possible outcome of any claims or judicial proceedings (submitting a copy of any relevant judgments) relating to the granting of compensation to FEDECAMARAS and the leaders concerned for the damage caused by these illegal acts. As regards the February 2008 bomb attack on FEDECAMARAS headquarters, the Committee regrets that it has not received any reply from the Government and again insists that the Government send its observations on the points raised by FEDECAMARAS and, in particular, on the outcome of the appeal against the closing of the case and on any investigation carried out in order to determine whether anyone else was involved in the attack, and thus to shed light on its motive and to prevent any recurrence.*

706. *Recommendations (c) and (d) of the previous examination of the case by the Committee concern: the establishment of structured bodies for bipartite and tripartite social dialogue and an action plan, with a view to resolving all outstanding issues, including issues relating to the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, as well as actions that create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee observes that the Government provides information on an attempt to hold a tripartite meeting during the International Labour Conference and indicates that it has invited FEDECAMARAS to join the dialogue processes relating to the transformation and reorganization of the State, which are linked to the work of the National Constituent Assembly. Furthermore, the Committee notes that the complainant organizations still report that there is no effective dialogue beyond certain formal exchanges and reiterate that there have been no dialogue processes in the country to which the Government had committed itself before the Governing Body of the ILO. The Committee notes with regret that, beyond the attempt to hold a meeting during the International Labour Conference, it is not apparent from information provided by the Government that it has followed up on the measures it had announced before the ILO Governing Body (an action plan that provided for the establishment of a round table for dialogue between representatives of the Government and of FEDECAMARAS, with a schedule of fortnightly meetings and the inclusion of FEDECAMARAS in the future socio-economic dialogue round table). The Committee also notes with regret that the*

Government does not report having taking any concrete steps to follow up on the Committee's recommendations concerning the establishment of structured bodies for bipartite and tripartite social dialogue, as well as an action plan to be established in consultation with the social partners with stages and specific time frames for implementation with the technical assistance of the ILO – an action plan recommended since 2014 by the Governing Body as a result of the high-level tripartite mission. While deeply deploring the lack of information and progress in this regard and in light of the Governing Body's decision of 24 March 2017 (in the examination of a complaint presented by virtue of article 26 of the ILO Constitution against the Bolivarian Republic of Venezuela alleging non-compliance with Conventions Nos 26, 87 and 144), in which the Government was urged to institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues, including matters relating to the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee reiterates its recommendation and insists on the urgency of the Government taking the requested measures without delay, including taking immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations.

707. *As regards recommendation (e) from its previous examination of the case (allegations of detention and trial of employers and leaders in various sectors), the Committee takes due note of the fact that, in relation to the supermarket chain, the cases against the accused were closed (the preventive detention measures against them have consequently been lifted) but that the Prosecutor's Office appealed the decision in January 2017. The Committee requests the Government to keep it informed of the outcome of this appeal. With regard to the meat processing company, the Committee notes that, while some of the charges against some of those under investigation are specified, the Government does not indicate, as requested by the Committee, the specific allegations against each of the people under investigation or trial by the judicial authorities. The Committee is therefore bound to reiterate its previous recommendation and urges the Government to provide precise information on the progress of the respective judicial proceedings. Noting that only one preventive detention would remain in force, the Committee calls on the authorities to consider lifting or replacing this preventive detention measure. Finally, regarding the complainants' allegations of 8 May 2011 (assaults and arrests of leaders, employees and shareholders of a consortium of credit card transaction companies by government authorities, subjecting them to public ridicule without guaranteeing due process and their right of defence), the Committee notes that the Government indicates that the acts in question were a response to financial sabotage, that the competent authorities proceeded to arrest the perpetrators, and that it was in no way an act of intimidation against businessmen. In the absence of more detailed information and in the light of the grave nature of the allegations, the Committee invites the complainant organizations to provide any additional information at their disposal and requests the Government to send a detailed reply in the light of such information, indicating the specific allegations against each of the persons under investigation or trial and to provide information on the progress and status of the judicial proceedings concerned.*

708. *As regards recommendation (f) from its previous examination of the case (referring to the holding of full consultations with the most representative workers' and employers' organizations, including FEDECAMARAS, on draft legislation covering labour, economic or social matters that affect their interests and those of their members), the Committee notes that, with regard to consultations at the national level, the Government indicated that it had requested FEDECAMARAS to provide in writing comments on the increase in the minimum wage and that, in its most recent observations, it referred to a broad call for dialogue with the productive sectors within the framework of the Constituent National Assembly. Furthermore, the Committee notes that complainant organizations continue to denounce the lack of effective dialogue (in relation to the invitation to provide comments on the increase in the minimum wage, FEDECAMARAS indicates that it was unable to make specific considerations, as the Government did not transmit to it any specific terms or elements on*

the increase under consideration, and therefore the increase was approved without consultation). The Committee emphasizes that it is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Government must also ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations [see ***Digest****, op. cit., para. 1071]. The Committee further notes that, as claimed by the complainant organizations and not denied by the Government, important governmental measures affecting the interests of employers' organizations, such as the establishment of Workers' Production Boards (WPBs), have continued to be taken without consultation with the social partners concerned, including FEDECAMARAS. Deeply deploring the persistent nature of this situation, the Committee firmly urges that full consultations on draft legislation covering labour, economic or social matters that affect their interests and those of their members be held without delay with the most representative workers' and employers' organizations, including FEDECAMARAS.*

709. *The Committee also notes with concern the allegations of the complainant organizations regarding the establishment, without consultation, of bodies that would infringe on the freedom of association, in particular the WPBs (formed of three employees' representatives from the enterprise and four from the State, and which is in charge of reviewing, approving, controlling and monitoring the fundamental programmes and projects of the productive process of the work entities), as an additional mechanism of state interference. The complainant organizations also refer to other strategies and institutions for state interference (like the General Staff of the Working Class (a government organization to strengthen the WPBs) and the Labour Feminist Brigades (a body to promote control of the entire social process of work in each company)). The Committee takes note that the Government states that: (i) WPBs are an institution in accordance with the Organic Labour and Workers Act which was established to promote the participation of the working class as a key actor in the management of production; and (ii) that the creation of WPBs in no way replaces or opposes the trade union organization, but rather it is conceived as a form of primary participation of workers in the real and effective monitoring of the productive processes of their work entities. The Committee notes with great concern, however, that Decree No. 17 of 8 November 2016 establishing the WPBs, which is applicable to all labour entities in the country, both public and private and issued under the state of emergency for economic hardship states in its preamble, with a view to justifying the introduction of the WPBs, that: (i) "the Ministry ... has the obligation to organize the working class starting from the work entities themselves"; (ii) Article 1 states that the scope and purpose of the WPBs is "to promote the participation of the working class as a key actor in the management of production from both public and private work entities"; and (iii) that the WPBs are created with a pre-established composition that comprises representatives of the public authorities, including the armed forces and the Bolivarian militias. The Committee considers that the establishment of the WPBs constitutes a violation of the freedom of association and an interference in the free development of collective relations between workers' organizations and employers and their organizations. The Committee is bound to recall that a government should not adopt measures such as the creation by decree of institutions to organize workers into bodies established and controlled by public authorities, which may interfere with the right of workers to organize freely and the freedom of negotiation between independent organizations of workers and of employers. In this regard, the Committee considers that the establishment of public bodies that may involve government control over the representation of the workers' sector also constitutes interference in the freedom of action and of negotiation of the employers and their organizations and is incompatible with the principles of freedom of association and collective bargaining. The Committee urges the Government to take the necessary measures, including the repeal or reform of regulations or legislation with a view to eliminating any institutions or provisions established or promoted by public authorities – including the WPBs or other bodies such as the General*

Staff of the Working Class and the Labour Feminist Brigades – which may supplant independent trade union organizations or interfere in the freedom of negotiation between independent workers' organizations and employers' organizations. In view of the fact that the Bolivarian Republic of Venezuela has ratified Conventions Nos 87 and 98, the Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and requests the Government to keep the CEARC informed of any measures adopted in this regard.

The Committee's recommendations

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

(a) Deploring the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, the Committee insists on the urgency of the Government taking strong measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela. The Committee strongly urges the Government to take all necessary measures to ensure that FEDECAMARAS is able to exercise its rights as an employers' organization in a climate that is free from violence, pressure or threats of any kind against its leaders and members and to promote, together with that organization, social dialogue based on respect.

(b) As regards the abduction and mistreatment in 2010 of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds), the Committee once again urges the Government to send a copy of the ruling by which the accused was sentenced and to state whether other people were charged (providing information on any related proceedings and the outcome thereof). The Committee also requests the Government to inform it of the status and possible outcome of any complaint or judicial proceedings (sending a copy of any relevant ruling) relating to the granting of compensation to FEDECAMARAS and the leaders concerned for the damage caused by these illegal acts. As regards the February 2008 bomb attack on FEDECAMARAS headquarters, the Committee again insists that the Government send its observations on the points raised by FEDECAMARAS and, in particular, on the outcome of the appeal against the closing of the case and on any investigation carried out in order to determine whether anyone else was involved in the attack, and thus to shed light on its motive and to prevent any recurrence.

(c) As regards the structured bodies for bipartite and tripartite social dialogue that need to be established in the country; the plan of action to be established in consultation with the social partners with stages and specific time frames for implementation with the technical assistance of the ILO, as recommended by the Governing Body; and the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee deeply deplores the lack of information and further progress in this regard. It recalls that the conclusions of the high-level tripartite mission conducted in 2014 refer to a round table between the Government and

FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee also recalls that at its March 2017 session, in examining the complaint presented under article 26 of the ILO Constitution against the Bolivarian Republic of Venezuela alleging non-compliance with Conventions Nos 26, 87 and 144, the Governing Body urged the Government to institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues, including matters relating to the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders. The Committee insists once again on the urgency of the Government adopting immediately tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission and the Governing Body. Deeply deploring once again that the Government has not yet provided the requested plan of action, the Committee once again urges it to implement fully without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon.

(d) The Committee, in line with the conclusions of the high-level tripartite mission, again urges the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee urges the Government to inform it of any measures taken in this regard.

(e) As regards the criminal investigations concerning the meat processing company, the Committee urges the Government not merely to give an indication of general criminal offences but to indicate the specific allegations against each of the people under investigation or trial by the judicial authorities and to provide precise information on the progress of the respective judicial proceedings. Furthermore, the Committee requests the competent authorities to consider lifting or replacing the only preventive detention measure in the framework of those investigations. The Committee also requests the Government to keep it informed of the outcome of the Prosecutor's Office's appeal against the judicial decision to close the criminal investigations concerning the supermarket chain. In relation to allegations of assault and detention of leaders and shareholders of a consortium of credit card transaction companies, the Committee invites the complainant organizations to provide any additional information at their disposal and requests the Government to send a detailed reply in the light of such information, indicating the specific allegations against each of the persons under investigation or trial and to provide information on the progress and status of the judicial proceedings concerned.

(f) The Committee firmly urges that full consultations on draft legislation covering labour, economic or social matters that affect their interests and those of their members be held without delay with the most representative workers' and employers' organizations, including FEDECAMARAS.

(g) The Committee urges the Government to take the necessary measures, including the repeal or reform of regulations or legislation with a view to eliminating any institutions or provisions established or promoted by public

authorities – including the WPBs or other bodies such as the General Staff of the Working Class and the Labour Feminist Brigades – which may supplant independent trade union organizations or interfere in the freedom of negotiation between independent organizations of workers and of employers. In view of the fact that the Bolivarian Republic of Venezuela has ratified Conventions Nos 87 and 98, the Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and requests the Government to keep the CEARC informed of any measures adopted in this regard.

(h) The Committee expresses its deep concern at the lack of information and progress on the above issues and urges the Government to take all the requested measures without delay.

(i) The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

Geneva, 3 November 2017 *(Signed)* Mr Takanobu Teramoto
Chairperson

Points for decision: